



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Sixth day of July Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.10795 of 2015

UMAR FAROOK

... PETITIONER / ACCUSED

Vs

STATE REP BY:: THE SUPERINTENDENT OF CUSTOMS
AIR INTELLIGENCE UNIT, CUSTOMS AIRPORT,
SEMPATHU, TRICHY

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.V.K.SATHIAMURTHY Advocate

For Respondent : Mr.C.ARUL VADIVEL SEKAR, SPL PP FOR CUSTOMS.

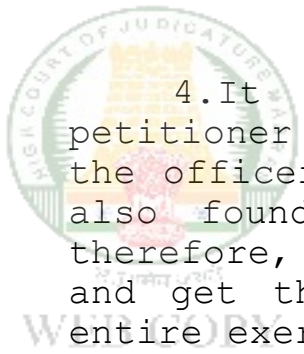
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is arrayed as an accused, was arrested 24.11.2013 and remanded to judicial custody for the alleged offence punishable under sections 8(c) r/w 21(c), 22(c), 23(c), 28 and 29 of the NDPS Act, 1985 in O.R.No.39/2013 AIU-TRICHY on the file of the respondent, in connection with a case in C.C.No.39 of 2014 on the file of the learned Special Court for EC Act and NDPS Cases, Pudukottai and seeks bail.

2.The case of the prosecution is that on 24.11.2013, the officials of Air Intelligence Unit Customs Airport, Trichy found that the accused was in possession of 1775 gms of Amphetamines.

3.The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. It is further submitted that as per the prosecution, on intelligence information, the respondent intercepted the petitioner on 24.11.2013 at 8.30 a.m and the search and seizure continued till 14.00 hours, when he was to travel by Air Asia Flight to Kuala Lumpur and found the contraband; that the respondent officials immediately tested the contraband and found that it is Amphetamine and thereafter, issued summon to the accused and got a statement under section 67 of the NDPS Act at 15.00 hours on the same day itself.



4. It is the contention of the learned counsel for the petitioner that the accused was under the control and custody of the officers of the respondent from 8.30 a.m. on 24.11.2013 and also found that the contraband seized was Amphetamines and therefore, there is no necessity for the accused to issue summon and get the statement of the accused at 15.00 hours and the entire exercise was done only to get over sections 24 and 25 of the Indian Evidence Act. The learned counsel for the petitioner further submitted that even as per the statement of the accused given under section 67, would show that the petitioner had no knowledge about the contraband and it was only informed by the officials of the respondent and that the respondent had produced the contraband at 8.00 p.m. before the Judicial Magistrate No.1, Trichy and it was under the custody of the respondent/Godown till it was produced before the Special Court on 26.11.2014, which creates doubt over the prosecution case.

5. The learned counsel further submitted that the respondent intercepted the petitioner and seized the contraband only on special information, but the information was not sent to the higher officials as mandated in section 42(2) of the NDPS Act and that since the respondent has not satisfied the mandatory requirements, the valuable rights of the accused is prejudiced and therefore, he is entitled for bail. In support of his contention, the learned counsel for the petitioner has relied upon the following decisions:-

(a). In the judgment reported in **2013 CRL.L.J. 841(1)** in the case of **Sukhdev Singh vs. State of Haryana**, in which the Hon'ble Supreme Court has held as follows:-

"The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the investigating officer. He is obliged to furnish the information to his superior officer forthwith. That obviously means without any delay. But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance."

(b). In the judgment reported in **AIR 2000 SUPREME COURT 821** in the case of **Adbul Rashid Ibrahim Mansuri vs. State of Gujarat**, the Hon'ble Supreme court has held as

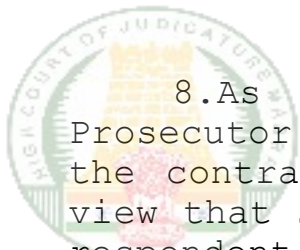


follows:-

"Where Police Officer had reason to believe from information given by any person that narcotic drug was kept or concealed in any building, conveyance or enclosed place, the requirements to be complied with as envisaged by S.42 by him before he proceeded to search any such building or conveyance or enclosed place were twofold. First is that he should have taken down the information in writing. Second is that he should have sent forthwith a copy thereof to his immediate official superior. Value of such an information, which was the earliest in point of time, for ascertaining the extent of the involvement of the appellant in the offence, was of a high degree. A criminal court cannot normally afford to be ignorant of such a valuable information. It is not enough that Police Officer was able to recollect from memory, when he was examined in Court after the lapse of a long time, as to what information he got before he proceeded to the scene. Therefore, contention that as the accused did not dispute the factum of recovery of the "Charas" from the vehicle it does not matter that the information was not recorded at the first instance by the police officer, cannot be approved because non-recording of information has in fact deprived the accused as well as the court of the material to ascertain what was the precise information which Police Officer got before proceeding to stop the vehicle. "

6. Per contra, the learned Special Public Prosecutor appearing for the respondent filed counter affidavit and a typed set opposing grant of bail. The learned counsel submitted that this is a case of commercial quantity and the value of the contraband is about 3.2 crores at the international market and that the accused was intercepted and the contraband was recovered in a public place and therefore, section 43 would apply to the facts of this case and section 42 is applicable, where search and seizure takes place in a closed premises.

7. It is further submitted that the statement of the accused would show that the accused had knowledge about the contraband and therefore, he was in conscious possession of the contraband; that the respondent produced the contraband on 25.11.2013 before the learned Judicial Magistrate at 5.00 a.m. and the learned Magistrate has given custody of the contraband to the respondent and the same was produced before the Special Court on 26.11.2013; that as per section 53 of the NDPS Act, the respondent has vested power to retain the contraband in his custody.



8.As rightly contended by the learned Special Public Prosecutor that the accused was intercepted in the Airport and the contraband was seized from him. So, this court is of the view that section 42 would not apply to the case at hand and the respondent has followed the procedures contemplated under the Act, while seizing the contraband and they have also laid a charge sheet after proper investigation. This court is of the considered view that the judgments relied upon by the learned counsel for the petitioner have no bearing to the instant case and the contention of the learned counsel for the petitioner cannot be countenanced at this stage.

9.In view of the above facts, this court is of the opinion that the petitioner is not entitled for bail. Hence, this petition is dismissed.

sd/-

06/07/2015

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Sub-Assistant Registrar (C.S.)

TO

1 THE SPECIAL PUBLIC PROSECUTOR FOR CUSTOMS.
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

2 THE SUPERINTENDENT
CENTRAL PRISON TIRUCHY

3 THE SUPERINTENDENT OF CUSTOMS
AIR INTELLIGENCE UNIT, CUSTOMS, TRICHY,
SEMPATHU, TRICHY

1. CC to M/S.V.K.SATHIAMURTHY Advocate SR.No.36614
1CC TO MR. C. ARUL VADIVEL SEKAR ADV SR: 36358

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ORDER

IN

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Date :06/07/2015