



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

Tuesday, the Third day of March Two Thousand Fifteen

PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH

CRL OP(MD) No.2242 of 2015

SULTAN SYED IBRAHIM

... PETITIONER / ACCUSED No.2

Vs

THE INSPECTOR OF POLICE

KEELAKARAI POLICE STATION, RAMANATHAPURAM DISTRICT.

CR.NO.39 OF 2014.

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.N. ANANTHAPADMANABAN Advocate

For Respondent : Mr.A.P.BALASUBRAMANIAN, Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

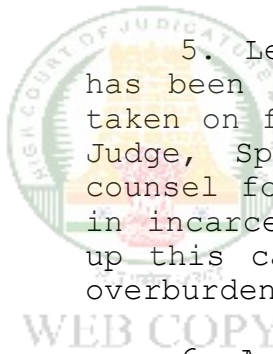
The petitioner, who was arrested and remanded to judicial custody on 01.03.2014 for the alleged offences punishable under Sections 8(c) r/w 21 (c) of NDPS Act in Crime No.39 of 2014 on the file of the respondent police, seeks bail.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

3. This is third bail petition and the earlier two bail petitions in Crl.O.P.(MD) Nos.12994 of 2014 and 6727 of 2014 were dismissed by this Court on 11.08.2014 and 23.06.2014 respectively.

4. The respondent police have filed a counter and in Paragraph No.2, they have stated as follows:

"2. I humbly submit that Prosecution case is that on 01.03.2014 the "Q" Branch Police personal conducting regular patrolling and vehicle check. During the checkup they waylaid one two wheeler bearing Registration No.TN 65 L0990 and enquired the petitioners herein and on checkup they came to know that the petitioners herein possessing one cotton bag which contains 10 plastic pockets weighting ½ Kgs of prohibited Contraband namely "Charas" totally quantity of 5 Kgs of "Charas" further on enquiry with the 2nd petitioner herein the "Q" Branch Police came to know that one Riffas Mohamed, Son of Pakeer Mohammed who is a Srilankan Nation now residing at Mannadi, Chennai had handed over the said contraband before 10 days and asked him to sell it for Rs.10,000/- per Kg. and on the basis of the statement given by the Inspector of Police "Q" Branch a case was registered in Cr.No.39/2014 Under Section 8(c) r/w 21(c) of NDPS Act 1985 and



5. Learned counsel for the petitioner submitted that investigation has been completed, the complaint has also been filed and the same was taken on file in C.C.No.52 of 2014 before the learned Additional Sessions Judge, Special Court for EC Act Cases, Pudukottai District. Learned counsel for the petitioner further submitted that the petitioner has been in incarceration since 01.03.2014 and that chances of Trial Court taking up this case on priority are very bleak inasmuch as the Trial Court is overburdened with similar cases as well regular IPC cases.

6. According to the prosecution, "Q" Branch Police intercepted a two wheeler, which was driven by one Haja Nijamudeen (A1) and the petitioner herein, namely, Sultan Syed Ibrahim (A2) was a pillion rider and the contraband was recovered from them.

7. Learned counsel for the petitioner brought to the notice of this Court the Special Report given by the "Q" Branch Inspector, who had seized the contraband to the Inspector of Police of Kilakarai Police Station in which it is stated that, when enquired, A1 had stated that he had received the contraband from A3 for onward transmission to Srilanka. Stressing on this, learned counsel for the petitioner submitted that there is no reference about the role played by this petitioner either in the Special Report or in the FIR and that this petitioner, even going by the prosecution case, was an innocent pillion rider. In this regard, learned counsel for the petitioner submitted a copy of a promissory note between the petitioner and A1 in order to drive home the point that he was having ordinary financial dealings with A1 and that he was merely an innocent pillion rider.

8. Learned counsel for the petitioner further brought to my notice a vernacular newspaper report dated 01.03.2104 in which the interception and seizure has been reported. Based on this, learned counsel for the petitioner submitted that the newspaper has published this seizure as a news item on 01.03.2014, and hence, the seizure must have been a day prior to that and not on 01.03.2014 as submitted by the prosecution. This Court cannot take notice of newspaper reports at the stage of granting bail, because such facts have to be proved only by adducing evidence during trial.

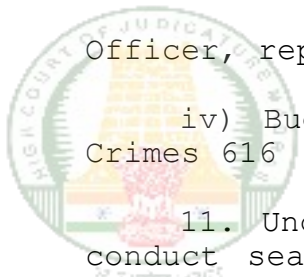
9. Learned counsel for the petitioner also submitted that A3 was arrested and remanded to custody on 12.03.2014 and only thereafter on 13.03.2014, he was taken into police custody and further statement was recorded from him, implicating this petitioner. Therefore, this Court should not place any reliance on it. Thus, learned counsel for the petitioner submitted that there are no materials implicating this petitioner except the fact that he was found along with the co-accused, when "Q" Branch Inspector conducted the vehicle check and seized the contraband.

10. Learned counsel for the petitioner relied upon a catena of judgments to emphasize that there should be conscious possession for sustaining conviction under the Act. The following judgements were relied upon by the learned counsel for the petitioner:

i) Ram Singh vs. Central Bureau of Narcotics, reported in AIR 2011 SC 2490

<https://hcservices.courts.gov.in/hcservices/> ii) Ram Singh vs. Union of India, reported in 2004 (4) Crimes 90

iii) S.Hussain @ Mohd. Hussain and others vs. The Senior Intelligence



Officer, reported in 2011 (1) Crimes 345 (Mad.)

iv) Buddharam and Another vs. State of M.P., reported in 2007 (3) Crimes 616 (MP)

11. Under Section 43 of NDPS Act, a Police Officer is empowered to conduct search, seize and arrest in a public place and this provision empowers him to arrest not only the person who is in possession of the contraband, but also the person in his company.

12. In this case, it cannot be said that A1 alone was having exclusive possession of the contraband. A1 and A2 were travelling and they both were having a bag in the Motor Bike from which the contraband was recovered. Under Section 35 of the NDPS Act (presumption of culpable mental state), presumption can be dislodged by the accused not by preponderance of probabilities, but it should be proved beyond reasonable doubt. Similarly, Section 54 of the NDPS Act states as follows:

"Section 54. Presumption from possession of illicit articles - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of -

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(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

13. In the teeth of this presumption, this Court cannot, in a bail petition, give a finding that this petitioner did not have conscious possession of the contraband. The power of this Court to grant bail, which flows from Section 439 Cr.P.C. has been circumscribed by the provisions of Section 37 of NDPS Act and only if the test laid down therein is passed, this Court can grant bail to the accused. In the light of the facts available in the case that the contraband was seized pursuant to the interception of A1 and A2, while they were travelling together in the motor cycle, it cannot be said that there are no materials against this petitioner showing his involvement in the offence.

14. Under such circumstances, this petition for bail fails and accordingly, stands dismissed. Before parting with, this Court is constrained to issue a direction to the Trial Court to expeditiously conduct the trial, since the accused are in incarceration.

sd/-

03/03/2015

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TO

1 THE INSPECTOR OF POLICE
KEELAKARAI POLICE STATION, RAMANATHAPURAM DISTRICT.

2 THE OFFICER IN CHARGE
DISTRICT JAIL, RAMNAD.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Sm:06.03.2015:4P/4C:

ORDER
IN
CRL OP(MD) No.2242 of 2015
Date :03/03/2015