



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

Monday, the Second day of February Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.23942 of 2014

MURUGAN

... PETITIONER/ACCUSED NO.4

Vs

THE STATE REP BY
THE SUB INSPECTOR OF POLICE
CUMBUM NORTH POLICE STATION,
THENI DT. CR.NO.169 OF 2014

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.R.SURESH KUMAR Advocate

For Respondent : M/S.S.PRABHA, Government Advocate(Crl.side)

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

ORDER : The Court Made the following order :-

The petitioner, who surrendered before the learned Judicial Magistrate, Andipatty and was remanded to judicial custody on 17.06.2014 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and Section 25 of NDPS Act in Crime No.169 of 2014 on the file of the respondent police, seeks anticipatory 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 first bail petition in Crl.O.P.(MD) No.15863 of 2014 was dismissed on 31.10.2014 by a detailed order after extracting the provisions of Section 37 of the NDPS Act.

4. The respondent has filed a counter wherein they have narrated the facts as under:

"3...The brief fact of the FIR is that on 18.05.2014 on the Secrete information by the Police informer, the police party involved a vehicle check up. At about 7.00 a.m. the informer identified the Toyota Innova Grey Colour Car bearing Registration No.TN-59-AH-9394. The police party stopped the Car, 3 identified persons left from the car. The police team explain about the information and expressed that to search the Car. At the time 2 others were escaped from the place except one Lakshmanan. The police team found 100 kg. of Kanja (rolled by 50 brown colour papers). The samples were collected and seized the recovered things the



used Car also seized when the accused was enquired, he voluntarily gave a statement that all the 3 accused purchased the Kanja from Andhra for sell. At about 12.15 p.m. the accused was arrested and the FIR was also registered.

4. I respectfully submit that this petitioner Murugan is arrayed as an accused in this case by way of confession statement given by the accused No.3 Arunkumar. In his confession statement he clearly state that all the 4 accused were went to Andra State each of them equally inversed the money and to purchase the Kanja. When all of them return back to Cumbum this petitioner dropped in his Village Thevaram.

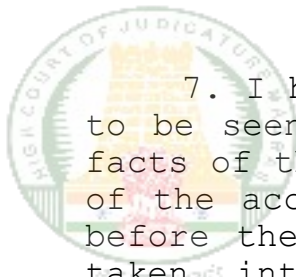
5. I respectfully submit that on 17.06.2014 this petitioner surrendered before the Learned Judicial Magistrate, Andipatti and sent to Judicial Custody. So, the Inspector of Police, North Police Station, Cumbum Manimaran filed a petition before the Principal Special E.G. & NDPS Act cases cum Additional District Judge, Madurai u/s.167(2) (3) of Cr.P.C. for seeking police custody in Cr.M.P.No.1072 of 2014. The same was allowed on 23.06.2014. The Hon'ble Court ordered to sent the accused for police custody from 23.06.2014 to at 2.30 p.m. to 24.06.2014 at 2.30 p.m. for interrogation. At the time of interrogation this petitioner voluntarily gave a statement before the witnesses of VAO. In his confession statement he admitted his involvement in this case."

5. Learned counsel for the petitioner submitted that there is a gross violation of Section 50 of NDPS Act inasmuch as Police have not properly given the options required to be given to the accused before conducting the personal search. In support of his contention, learned counsel for the petitioner strongly relied upon the judgment of the Hon'ble Supreme Court in the case of State of Rajasthan vs. Parmanand and another, reported in AIR 2014 SC 1384. In paragraph No.13 of the said judgment, facts are stated as follows:

"13. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest gazetted officer or a nearest Magistrate or before PW-5 J.S.Negi, the Superintendent."

In the aforesaid judgment, three options were given to the accused, but the facts in this case is different.

6. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in Saiyad Mohd. Saiyad Umar Saiyad and others vs. State of Gujarat, reported in (1995) 3 SCC 610 and submitted that once there is a violation of Section 50 of the NDPS Act, then presumption under Section 54 of NDPS Act and Section 114 of the Evidence Act, cannot be raised in favour of the prosecution.



7. I have no quarrel with this proposition. In this case, it is to be seen whether there has been any violation of Section 50. On facts of this case, seizure of contraband was in the vehicle and two of the accused escaped from the place. This petitioner surrendered before the learned Magistrate on 17.06.2014 and thereafter, he was taken into custody. Therefore, on the facts of this case, application of Section 50 does not arise at all. In the teeth of this finding, it may not be necessary to travel into other judgments that have been relied on by the learned counsel for the petitioner in support of the proposition that violation of Section 50 will vitiate the search and seizure.

8. That apart, all the judgments relied upon by the petitioner were after a full-fledged trial, where evidence has already been adduced by the prosecution. In this case, that stage is not reached.

9. Learned counsel further relied upon a judgment of the learned Single Judge of the Delhi High Court in the case of Amarjeet Singh vs. Director of Revenue Intelligence, reported in (2009) 163 DLT 524. On a close reading of the bail order passed by the learned Single Judge, it is seen that he has cogent reasons, namely, at the very first instance, he has disbelieved the very interception and seizure by DRI Officials and on that premise, he has granted bail. In Paragraph No.37(e), learned Single Judge has stated as follows:

"37(e) The repeated affidavits of the officers of the DRI and particularly the intelligence Officer Devendra Singh of the events that transpired do not inspire confidence at all. At every possible stage there is an improvement of the version of what happened in the evening of 3rd April 2008 outside the Capital Court in Munirka and thereafter."

10. Finally, learned counsel for the petitioner submitted that this petitioner is suffering from HIV Positive and in connection with it, he produced certain medical records. Medical records produced by the petitioner show that he is taking treatment from 2009 onwards and we are now in 2015, which means that his health condition does not appear to have deteriorated. The fact that he was able to go with the co-accused to Andhra Pradesh for procuring the contraband and later abscond, when the contraband was seized, militates against the contention that he is sick. In any event, sickness is not a ground for granting bail.

11. In the result, this bail petition is dismissed.

sd/-

02/02/2015

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TO

1 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI

2 THE SUB INSPECTOR OF POLICE
CUMBUM NORTH POLICE STATION, THENI DT.

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

+1 CC TO M/S.R.SURESH KUMAR, ADVOCATE SR.NO.4863

ORDER

IN

CRL OP (MD) No.23942 of 2014

Date :02/02/2015

NA/03/02/2015/P4/5C