



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

Monday, the Thirteenth day of April Two Thousand Fifteen
PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) Nos.5213 & 5692 of 2015

MOHAN

... PETITIONER / ACCUSED NO.2
IN CRL.OP(MD)NO.5213 of 2015

RAMAMOORTHY

... PETITIONER / ACCUSED NO.1
IN CRL.OP(MD)NO.5692 of 2015

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE (L & O),
E2. MATHICHIYAM POLICE STATION,
MADURAI CITY.
(CRIME NO.956 OF 2014)

... RESPONDENT / COMPLAINANT
SAME IN BOTH PETITIONS

For Petitioner : M/S.P.GUNASEKARAN, Advocate in Crl.OP(MD)No.5213/15

For Petitioner : MR.M.JEGADEESH PANDIAN, Advocate
for M/S.K.J.ASSOCIATES in Crl.OP(MD)No.5692/15

For Respondent : M/S.K.V.RAJARAJAN, Govt. Advocate (Crl.Side)
in both petitions

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

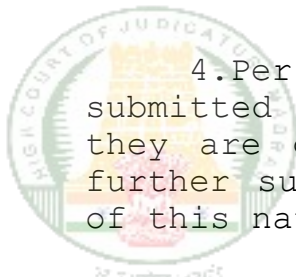
ORDER : The Court Made the following order :-

The petitioner in Crl.O.P(MD)No.5213 of 2015 is A2 and the petitioner in Crl.O.P(MD)No.5692 of 2015 is A1 and they were arrested and remanded to judicial custody on 04.12.2014 and 03.12.2014 respectively for the alleged offence punishable under section 8(c) r/w 20(b)(ii)(C) of NDPS Act, in Crime No.956 of 2014 on the file of the respondent police and hence, seek bail.

2.The case of the prosecution is that the accused were having plastic bags and when they were searched, A1 was found in possession of 14.700 of Ganja and A2 was found in possession of 6.300 kgs of Ganja.

3.The learned counsels appearing for the petitioners submitted that the petitioners have been incarceration for more than 120 days and the respondent has completed the investigation and also laid a charge sheet in this case. It is further submitted that the respondent has not followed the procedure contemplated under section 50 of the NDPS Act and in support of their contention, they have relied on the judgment of the Hon'ble Apex Court reported in **(2014)5**

<https://hccres.ces.gauis.gov.in/hccres/jcs/>
SCC 345 in the case of State of Rajasthan and Vs. Parmanand and another.



4. Per contra, the learned Government Advocate (Criminal side) submitted that the petitioners belong to Vellore District and if they are granted bail, they will not be available for trial. He further submitted that the petitioners are not having similar case of this nature.

5. In the judgment reported in **(2014)5 SCC 345 in the case of State of Rajasthan vs. Parmanand and another**, the Hon'ble Apex Court has held as follows:-

"17. In our opinion, a joint communication of the right available under section 50(1) of the NDPS Act to the accused would frustrate the very purpose of section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate...."

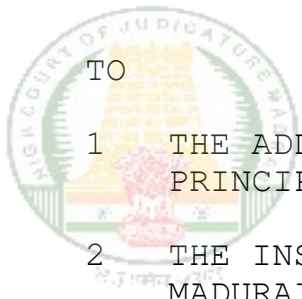
6. Considering the facts and circumstances of the case and also considering the fact that the petitioners have been in judicial custody for more than 120 days, this Court is inclined to grant bail to the petitioners with certain conditions.

7. Accordingly, the petitioners are ordered to be released on bail, on each of them executing a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai and on further condition that the petitioners shall report before the trial court for all future hearings without fail.

sd/-

13/04/2015

/ TRUE COPY /



TO

1 THE ADDITIONAL DISTRICT JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.

2 THE INSPECTOR OF POLICE, E2. MATHICHIYAM POLICE STATION,
MADURAI CITY.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1. CC to M/S.P.GUNASEKARAN, Advocate SR.No.18617.

+1. CC to M/S.K.J.ASSOCIATES, Advocate SR.No.18607.

ORDER IN

CRL OP(MD) Nos.5213 & 5692 of 2015

Date :13/04/2015

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