



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

Monday, the Ninth day of February Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.718 of 2015

HAJA NAZUMUDEEN

... PETITIONER / ACCUSED No.1

Vs

THE STATE REP. BY THE INSPECTOR OF POLICE
KEELAKARAI POLICE STATION,
RAMANATHAPURAM DISTRICT.

CR.NO. 39/2014.

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.S.DEENADHAYALAN Advocate

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

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

ORDER : The Court Made the following order :-

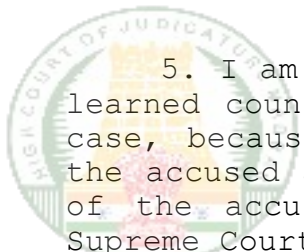
The petitioner, who was arrested and remanded to judicial custody on 01.03.2014 for the alleged offences punishable under Sections 8(c) r/w 21 (c) of NDPS Act in Crime No.39 of 2014 on the file of the respondent police, seeks bail.

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

3. This is second bail petition and the first bail petition in Crl.O.P.(MD) No.19122 of 2014 was dismissed on 17.11.2014. The respondent have filed a counter in which they have stated as follows:

"The case of prosecution is that on 01.03.2014, the respondent police conducted a vehicle check-up, at that time, the petitioner is the rider of bike along with 2nd accused on a road in Yamaha Vehicle bearing registration No.TN 65 L 0990, the respondent police waylaid the vehicle and checked up and found that 4 kilo 900 grams of prohibited product viz., 'Charas'."

4. Learned counsel for the petitioner would strenuously contend that there is a clear violation of Section 50 of the NDPS Act inasmuch as this petitioner was not given options contemplated under Section 50 of the NDPS Act, which has been held to be mandatory by a Constitution Bench of the Hon'ble Supreme Court in State of Punjab vs. Baldev Singh etc., reported in 1999 CRI.L.J.3672. He relied upon the Paragraph No.52 of the said judgment and submitted that even presumption under Section 54 of NDPS Act cannot be raised, when there is a violation of Section 50.



5. I am unable to persuade myself to agree with the contention of the learned counsel for the petitioner in the facts and circumstances of the case, because the contraband was recovered from a bag in the vehicle of the accused and the recovery was not pursuant to the search of the person of the accused. In Paragraph No.53 of the said judgment, the Hon'ble Supreme Court has clearly stated as follows:

"53. We, therefore, hold that an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Act, cannot by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused. Any other material / article recovered during that search may, however, be relied upon by the prosecution in other / independent proceedings against an accused notwithstanding the recovery of that material during an illegal search and its admissibility would depend upon the relevancy of that material and the facts and circumstances of that case."

6. The Hon'ble Supreme Court stated that if any recovery is effected from the person of the accused in violation of Section 50 NDPS Act, then the search is vitiated. However, in this case, there is no violation of Section 50 of NDPS Act inasmuch as the contraband was not recovered from the body search of the accused, but from the vehicle.

7. In the light of Section 37 of NDPS Act, there are overwhelming materials against this petitioner. Under such circumstances, this Court is not inclined to grant bail to this petitioner. Hence, the Criminal Original Petition is dismissed.

sd/-
09/02/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

- 1 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
- 2 THE OFFICER INCHARGE, DISTRICT PRISON, RAMANATHAPURAM.
- 3 THE INSPECTOR OF POLICE
KEELAKARAI POLICE STATION, RAMANATHAPURAM DISTRICT.

TS/11.02.2015/2P-4C

ORDER
IN
CRL OP(MD) No.718 of 2015
Date :09/02/2015