



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

Thursday, the Ninth day of July Two Thousand Fifteen
PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) Nos.9746 & 9739 of 2015

WEB COPY

P. MUTHUMARI @ MANDAMARI ... PETITIONER/1ST PETITIONER ACCUSED NO.1
IN CRL OP(MD)NO.9746/2015

GANESAN @ MUTTAKANNAN ... PETITIONER/ACCUSED NO.2
IN CRL OP(MD)NO.9739/2015

Vs

STATE REP.BY
THE INTELLIGENCE OFFICER
NARCOTIC CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI,
(NCB FILE NO.48/1/01/2014)

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

For Petitioners : M/S.B.PANDIARAJAN Advocate in both petitions

For Respondent : MR.C.ARUL VADIVEL @ SEKAR,
Special Public Prosecutor for NCB Cases in both petitions

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as A1 and A2 were arrested and remanded to judicial custody on 08.06.2014 for the alleged offences punishable under sections 8(c) r/w 20(b)(ii)(C) and 27(A) and 28 and 29 of NDPS Act, in NCB File No.48/1/01/2014 on the file of the respondent and hence, seek bail.

2.According to the de-facto complainant, on 06.06.2014 on receipt of secret information, the respondent police searched the house of the accused in Ammankovilpatti and seized 40 kgs of Ganja.

3.The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have been falsely implicated in this case; that the respondent has not followed the mandatory provision contained in sections 42(2), 50, 57 and 76 of Act, in recording the information in writing and conducting search of the female accused and in the seizure mahazar obtained the signature of one R.Srinivasagan, who is a fake person and the secret information was not sent to the superior officer within 72 hours and in view of the violation of the mandatory provisions, the accused are entitled for bail.

4.The learned counsel further submitted that as per section 42 of NDPS Act, the secret information has to be reduced into writing, but in this case, the information is a typed one and the respondent has to conduct search at a premises, after sunrise and before sunset. However,



in this case, the search had taken place, after the sunset and the arrest memo contains file number, which shows that the entire prosecution is false.

5.The learned counsel for the petitioners has relied upon the decisions reported in (1996)6 SCC 172 in the case of State of Punjab vs. Baldev Singh, 1997(3) Crime 486 ORISSA HIGH COURT and AIR 2014 SUPREME COURT 1384 in support of his contention that no female shall be searched, any one excepting female and it is obligatory for officials to take down the secret information in writing before proceeding to search and the breach of the mandatory provisions vitiate the trial.

6.The learned Special Public Prosecutor vehemently opposed the bail by filing counter and additional counter, contending that the respondent has followed strictly the provisions contemplated under the NDPS Act. The learned Special Public Prosecutor further submitted that as per section 42(1) of the Act, the information was sent to the superior officer within 72 hours and that section 50 is not applicable for the reason that recovery was not from the body of the accused, but the contraband was seized in their house and further at the time of search and seizure, one Mrs.Andal, a female constable was present.

7.It is further submitted that on receipt the secret information, the respondent used to assign a file number before going to the place of occurrence and therefore, the contention of the petitioner that the arrest memo contains file number has no substance; that the officials of the NCB Department, entered into the house of the accused at 5.30 p.m before the sunset and the seizure had taken place subsequently and therefore, there is no violation of section 42(1) of the Act and that the word 'writing' in section 42(2) of the NDPS Act includes any form of writing such as handwriting, typewriting and shorthand writing etc. and it need not be construed as handwriting only.

8.As rightly contended by the learned Special Public Prosecutor, the search was conducted in the house of the accused and the contraband was recovered from their house. Moreover, as per the documents provided by the respondent, Mrs.Andal a female constable was present during the search and she conducted search of the accused and it was specifically mentioned in the Magazar itself, which was also accepted by the accused, while recording statement under section 67 of NDPS Act. The records reveal that information was sent according to law to the superior officials.

9.In the light of the above fact, this court is of the opinion that the decisions relied on by the learned counsel for the petitioners have no bearing to the instant case at hand and there is no violation of law as contended by the counsel for the petitioners. Hence, the petitioners are entitled for bail and accordingly, both the petitions are dismissed.

sd/-

09/07/2015

/ TRUE COPY /



TO

1 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

2 THE OFFICER INCHARGE,
WOMEN PRISON, TRICHY.

3 THE INTELLIGENCE OFFICER
NARCOTIC CONTROL BUREAU, MADURAI SUB ZONE,
MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR OF NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2 CCs to M/S.B.PANDIARAJAN Advocate SR.Nos.337693 & 337694

ORDER

IN

CRL OP(MD) Nos.9746 & 9739 of 2015

Date :09/07/2015

PA/SJW/13.07.2015/3P/7C