



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

Wednesday, the Ninth day of March Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.2053 of 2016

S. KUTTY @ CHIDAMBARAM ... PETITIONER/SOLE ACCUSED

Vs

STATE REP BY THE INSPECTOR OF POLICE
TALUK POLICE STATION,
THANJAVUR DISTRICT,
CR NO.391 OF 2015.

... RESPONDENT/COMPLAINANT

For Petitioner : M/S R.SURESH KUMAR Advocate

For Respondent : MR.A.P.BALASUBRAMANI Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

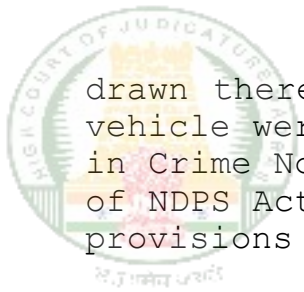
Reserved on	Pronounced on
03.03.2016	09.03.2016

The petitioner/sole accused, who was arrested and remanded to judicial custody on 07.09.2015 for the alleged offences punishable under Sections 8(c) r/w Sections 20(b)(ii)(c) of NDPS Act in Crime No.391 of 2015 on the file of the respondent police, seeks bail.

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

3. This is second bail petition and the first bail petition in Crl.O.P.(MD) No.1009 of 2016 was dismissed on 21.01.2016. The respondent police have filed a detailed counter, refuting the contentions raised by the petitioner.

4. It is the case of the prosecution that on prior intelligence, the Inspector of Police, Thanjavur Taluk Police Station and his team were conducting vehicle check around 18:00 hours on 07.09.2015. At that time, they stopped a Hero Passion Xpro Black Colour motorcycle, driven by the petitioner, in which there were two large sacks. When the sacks were examined, it contained ganja weighing 22 kgs. The contraband was seized under the cover of mahazar in the presence of independent witnesses and samples were



drawn therefrom. The petitioner was arrested and the contraband and vehicle were also seized by the Police. The Police registered a case in Crime No.391 of 2015 under Sections 8(c) r/w Section 20(b)(ii)(c) of NDPS Act. Since the quantity involved is commercial quantity, the provisions of Section 37 of NDPS Act will apply for grant of bail.

5. Learned counsel for the petitioner vehemently submitted that the provisions of Sections 42, 50, 52(a), 57 and 57(A) of NDPS Act has been violated and therefore, the petitioner will be entitled to be released on bail. In support of his contention, learned counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Union of India vs. Shiv Shanker Kesari**, reported in **(2007) 7 SCC 798**.

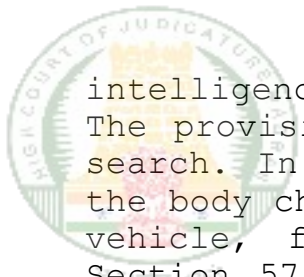
6. In the said case, 400 kgs of poppy straw was recovered from the house of the accused and bail was granted by the Supreme Court on the ground that the accused was not in exclusive possession of the contraband. On appeal, the Supreme Court considered the provisions of Section 37 of NDPS Act and remanded the matter once again to the High Court for fresh consideration, but on condition that the accused should surrender to custody.

7. In this case, the accused was found in possession of the contraband which he was carrying in his two wheeler. Thus, there is a prima facie ground for this Court to believe that the allegations are true and it cannot be stated that he is not guilty of the offence as laid down in Section 37 of the NDPS Act.

8. Learned counsel relied upon the judgment of the Orissa High Court in the case of **Anil Kumar Dash vs. State of Orissa [BLAPL No.1947 of 2015] decided on 22.09.2015** in support of his plea for bail. In the said judgment of Orissa High Court, the contraband involved was only 20 kg of ganja, which clearly falls in the category of commercial quantity.

9. Learned counsel for the petitioner further relied upon the judgment of the Delhi High Court in **Kashmir Singh vs. Narcotics Control Bureau, decided on 18.08.2016 [Indian Kanoon - <http://indiankanoon.org/doc/723172>]** and contended that the petitioner will be entitled to be released on bail. In the said case, the accused was arrested on 25.11.2003 and bail was granted after the complaint was filed by the Narcotic Control Bureau. In this case, the petitioner was arrested only now and the investigation has not been completed. Hence, on facts, the said judgment relied upon by the learned counsel for the petitioner is of no avail.

10. As regards the violation of Sections 42, 50, 52(a), 57 and 57(A) of NDPS Act, it is seen that none of these provisions will apply to the facts of the case, because, the seizure has been effected by the Police Officers in a public place and therefore, the provisions of Section 43 will apply. That apart, the Inspector of Police has informed the Superintendent of Police about the



intelligence received by him before proceeding for vehicle check. The provisions of Section 50 will apply only when there is a body search. In this case, the contraband was not recovered pursuant to the body check, but the accused was found carrying those bags in his vehicle, for which, Section 50 of NDPS Act cannot be applied. Section 57 of the NDPS Act has been held to be directory and not mandatory and therefore, violation, if any of Section 57 will not automatically entail bail to the accused. As regards Section 57(A), it relates to the seizure of illegally acquired properties by a narcotic offender. It casts duty upon the Seizing Officer to find out if the accused has acquired properties illegally by sale of drugs. If any such property is identified, then duty is cast upon the Officer to inform the competent authority. In this case, the Police have not taken any steps under Chapter 5(A) of the NDPS Act.

In the result, the petition is devoid of merits and the same is dismissed.

sd/-

09/03/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE INSPECTOR OF POLICE
TALUK POLICE STATION, THANJAVUR DISTRICT
- 2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHIRAPALLI
- 3 THE ADDL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S R.SURESH KUMAR Advocate SR.No.13330

ORDER

IN

CRL OP(MD) No.2053 of 2016

Date :09/03/2016

AA/NGM-SS/SAR-I/11.03.2016/3p-5c