



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

Friday, the Third day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.12869 & 12870 of 2017

1 RAJKUMAR,
2 VINOTH,

MOORTHY

... PETITIONERS / ACCUSED NO.2 & 3
IN CRL OP(MD)NO.12869/2017
...PETITIONER/ACCUSED NO.1
IN CRL OP(MD)NO.12870/2017

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
SWAMIMALAI POLICE STATION,
THANJAVUR,
CR.NO.136 OF 2017

... RESPONDENT / COMPLAINANT
IN BOTH THE PETITIONS

For Petitioner : M/S.J.MADHU Advocate IN BOTH THE PETITIONS

For Respondent : MR.T.MOHAN Additional Public prosecutor

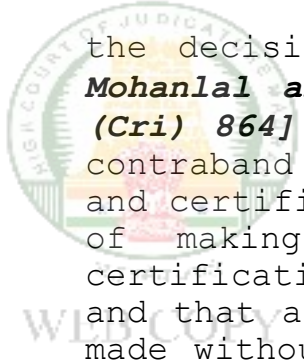
PETITIONS FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners, who were arrested and remanded to judicial custody on 06.05.2017, for the offences punishable under Sections 22 (c) of Narcotic Drugs & Psychotropic Substance Act, 1985 and Section 25(1)(a) of Arms Act, 1959, in Crime No.136 of 2017, on the file of the respondent police, seek bail.

2. The case of the prosecution is that A1 to A3 herein have transported 590 grams of Diazepam under the category of commercial quantity in a Swift car, bearing Registration No.TN-07-BY-0549 from Kumbakonam via Neelathnallur and the said vehicle was followed by another TATA Indigo vehicle bearing Registration No.TN-04-AC-6396, which was driven by A4, in which weapons were seized and A1 to A3 were travelling in the said Swift car, from which 590 grams of contraband viz., Diazepam was seized on the date of occurrence.

3. The learned counsel appearing for the petitioners would contend that sampling of the seized contraband was done in violation of Section 52 A (2)(c) of Narcotic Durgs & Psychotropic Substance Act. In support of his contention, the learned counsel relies on

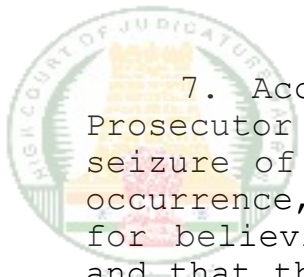


the decision of the Hon'ble Supreme Court in **Union of India Vs. Mohanlal and Another** reported in [(2016) (1) Supreme Court Cases (Cri) 864] in which it is held in para 19 that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act and that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned and that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful.

4. The learned Additional Public Prosecutor appearing for the respondents would submit on the basis of the counter filed by the respondent that there are 6 named accused in this case and the petitioners herein are arrayed as A1 to A3 respectively. The petitioner CrI.O.P(MD)No.12870 of 2017 is arrayed as A1 and the petitioners in CrI.O.P(MD)No.12869 of 2017 are arrayed as A2 and A3 respectively in Crime No.136 of 2017, registered by the respondent Police. Petitioners were arrested and remanded to judicial custody on 06.05.2017 and they are now in judicial custody. He further submitted that the earlier bail petitions filed by on behalf of the petitioners in CrI.O.P(MD)No.9217 of 2017 was dismissed by this Court in its order dated 24.07.2017 and the 2nd bail petition filed on behalf of A2 and A3 in CrI.O.P(MD)No.11618 of 2017 was dismissed on 12.09.2017, as withdrawn. The present bail petition is the 3rd bail petition for A2 and A3 and 2nd bail petition for A1.

5. The learned Additional Public Prosecutor would vehemently contend that the contraband involved in this case is a commercial quantity and Sections 37 & 85 of the NDPS Act, is a bar for granting bail to the petitioners herein and the investigation is still pending and there is no change in circumstances of dismissal of the earlier bail petitions of the petitioners herein. The learned Additional Public Prosecutor, in support of his contentions, relied on the decisions of the Hon'ble Supreme Court in **Union of India Vs. Niyazuddin, SK and another** reported in [2017 (3) MWN (Cr.) 304 (SC)] ; **Superintendent of Narcotics Control Bureau, Chennai Vs. R.Paulsamy** reported in [(2000) 9 Supreme Court Cases 549] ; and in **N.R.Mon Vs. Mohd.Nasimuddin** reported in [(2008) 6 Supreme Court Cases 721].

6. The learned Additional Public Prosecutor would vehemently submit that having regard to the provisions of Section 37 of the said Act, it would be too early to take into the account and judge the matter regarding non-compliance with formalities during the bail stage and in the light of Section 37 of the Act, no accused can be released on bail, when the application is opposed by the Public Prosecutor, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence on bail and non-compliance, if any, cannot be pre-judged at the stage of consideration of bail and not merely saying that no document has been produced pre-bail stage regarding non-compliance.



7. Accepting the contention of the learned Additional Public Prosecutor and also the facts and circumstances of the case and seizure of the commercial quantity of the contraband on the date of occurrence, this Court finds that there are no reasonable grounds for believing that the petitioners are not guilty of such offence and that they are not likely to commit any offence while on bail and also the bad antecedents of the petitioners in involving criminal cases, this Court is not inclined to grant bail to the petitioners, at this stage.

8. In the result, the Criminal Original Petitions stand dismissed.

sd/-
03/11/2017

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

TO

- 1 THE INSPECTOR OF POLICE,
SWAMIMALAI POLICE STATION, THANJAVUR,
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY

+1. CC to M/S.J.MADHU Advocate SR.No.33885

GJM/RR/SAR-I-7.11.2017-3P-5C

ORDER
IN
CRL OP(MD) No.12869 & 12870 of 2017
Date : 03/11/2017