



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

Monday, the Twenty Third day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.6387 of 2017

MARIYAPPAN

... PETITIONER / ACCUSED NO.2

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
NIBCID SIVAGANGAI,
CRIME NO. 7 OF 2017

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.R.ANAND Advocate

For Respondent : Mr.K.ANBARASAN, Government Advocate(Crl.Side)

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

ORDER : The Court Made the following order :-

The petitioner/accused No.2, who was arrested and remanded to judicial custody on 04.02.2017, for the alleged offences punishable under Sections 8(c) read with 22(c), 27(A), 29(1) and 25 of the NDPS Act, in Crime No.7 of 2017, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner was found in possession of 1 Kg of Methamphetamine and immediately arrested and remanded to judicial custody. The prosecution agency sent a sample for test, since the seized material is above commercial quantity. Thereafter, the report was received from the Forensic Science Department, Chennai.

3. The report states that the seized material is neither Narcotic drug nor Psychotropic substance, but only a fertilizer with commercial name 'Urea'. Initially while entertaining the bail application on 05.06.2017, this Court granted interim bail to the petitioner based on the report on the following conditions:

"(i) the petitioner shall execute a 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 and Sessions Judge, Special Court for EC and NDPS Cases, Pudukkottai. One of the sureties shall be a blood relation;

(ii) the petitioner shall report before the Investigation Officer daily at 10.30 a.m. in the morning and 5.30 p.m in the evening, until further orders;



(iii) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(iv) the petitioner shall not abscond either during investigation or trial;

(v) on breach of any of the aforesaid conditions, the Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the Magistrate/Trial Court himself as laid down by the **Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]**.

3. Not satisfying with the report received from the Tamil Nadu Forensic Science Department, Chennai, the prosecution agency decided to send the substance to Bangalore for getting second report. Accordingly, the prosecution filed an application before the Court below on 20.06.2017, whereas the first report was received on 01.06.2017.

4. However not satisfying with the first report, the prosecution agency decided to send samples to another Forensic Science Department for second test for which the prosecution agency filed a petition before the Court below. However, in the similar circumstances, the Hon'ble Supreme Court passed a detailed order in **Thana Singh vs. Central Bureau of Narcotics**, reported in **2013 (2) SCC 590** fixing the limitation of 15 days for filing the application for second test. The relevant paragraph reads as follows:

"27. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the laboratories concerned, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing /re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act."

5. On perusal of the above judgement and as well as the Act, immediately after the first report, the prosecution agency shall be filed an application within 15 days, however, in the present case, the prosecution filed an application after a lapse of 15 days, on the ground that the lower Court dismissed the application filed by the prosecution agency.

6. The learned counsel for the petitioner submitted that as on date, there is no offence as against the petitioner in the above said Crime No.7 of 2017 and he has not committed any offence as



alleged by the prosecution. He further submitted that A1 and other accused were granted regular bail after the first report. The petitioner is arrayed as A2.

7. The learned Government Advocate (Criminal side) appearing for the State did not dispute the above factual aspects.

8. Considering the facts and circumstances of the case, I am inclined to make absolute the interim bail already granted on 05.06.2017 by this Court, in addition to the following conditions:

(i) since the prosecution agency decided to get second report, it is appropriate to issue a direction to the petitioner to report before the investigation officer once in a week and accordingly the petitioner shall report before the investigation officer once in a week, i.e., on every Monday, between 10.00 a.m and 11.00 a.m., instead of daily twice;

(ii) the petitioner is directed to surrender his passport and he shall not leave the District without prior permission of the investigating agency;

(iii) if the prosecution agency get an order for sanction of getting second report from authorised laboratory, it is open to the prosecution agency to approach this Court for cancellation of bail.

sd/-
23/10/2017

/ TRUE COPY /

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

TO

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR EC AND NDPS ACT CASES, PUDUKOTTAI
- 2 THE OFFICER IN CHARGE, SUB JAIL PUDUKOTTAI.
- 3 THE INSPECTOR OF POLICE
NIBCID SIVAGANGAI,
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.6387 of 2017
Date : 23/10/2017

SMA/RR-BS/SAR-2/26.10.2017:3P/5C