



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

Tuesday, the Twentieth day of February Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.1206 of 2018

1 JEGAN

2 JESU DOSS

... PETITIONERS / ACCUSED Nos.1 & 2

Vs

THE STATE REPRESENTED BY
THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM.
RAMANATHAPURAM DISTRICT
O.R.NO. NOT KNOWN OF 2017

... RESPONDENT / COMPLAINANT

For Petitioners : M/S.V.JEYARANI Advocate

For Respondent : Mr.C.ARUL VADIVEL @ SEKAR
Special Public Prosecutor for Customs

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

Reserved on : 13.02.2018

Delivered on : 20.02.2018

The petitioners, who are arrayed as Accused Nos.1 and 2, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 20(c), 29, 28 r/w. 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in O.R.No.4 of 2017 and hence, seek anticipatory bail.

2.The case of the prosecution is that when the respondent police conducted a raid along with police party near Nochi Oorani Village, they found that two persons, viz., A3 and A4 were carrying some bags, which contains 43 Kgs of Ganja and seized the same. Based on the confession statement of the co-accused, a case has been registered against the petitioners by the respondent police for the offences stated above.

3.The learned counsel appearing for the petitioners submitted that the petitioners are innocents and have not committed any



offence as alleged and they have been falsely implicated in this case. He further submitted that the respondent police have not recovered any contraband materials from the petitioners and therefore, he prays for bail.

4. The learned Special Public Prosecutor appearing for the respondent submitted that totally there are four accused involved in this case. On the basis of specific information received and recorded on 17.12.2017 that around 50 Kgs of Ganja of Indian origin have been secreted in the Seashore of Nochiyurani and the same is to be smuggled out of India to Sri Lanka between 23.00 hours and 24.00 hours, the respondent organized a team of officers and rushed to the spot and apprehended one person by name P.Karthik S/o.Pandian and based on his confession, the petitioners and one another person were also added as accused in this case. He further submitted that the petitioners have also involved in various similar cases and if they are let out on bail, there is every possibility of the accused tampering the witnesses/evidence and hampering the investigation.

5. The submissions made by the learned counsel on either side are considered. In a case, which was mentioned in this application, as per the case of prosecution, four accused are involved. The petitioners herein are arrayed as A1 and A2. According to the case of the petitioners, the contraband weighing about 43 Kgs of Ganja are said to be recovered only from A3 and A4. When the search was made by the respondent police and also during the time of recovery of contraband materials, the petitioners were not present in the scene of occurrence and only with a motive to implicate the petitioners in the alleged offence, the respondent police is trying to arrest the petitioners. In this aspect, the learned counsel appearing for the petitioners relied on a judgment of the Delhi High Court in **Harpreet Singh Bahad Vs. D.R.I. [Bail Application No.2211 of 2008, dated 23.09.2009]**, wherein, the Delhi High Court considered the application for bail, which was filed by the accused, who was in the judicial custody. In the said judgment, it has been held as follows:

'16. Looking at the entire factual material, as indicated above, it does appear that apart from the so-called confessional statement and the admission that one packet was recovered from under the seat on which the petitioner was seated in the said Maruti 800 vehicle, there is no other evidence available with the prosecution. The so-called confessional statement, at this stage, does not appear to me to be a confession at all. In fact, the statement discloses that the petitioner did not know of the contents of the packet.

17. This being the case, it does appear that the petitioner was not in conscious possession of the said contraband. Therefore, I am satisfied



WEB COPY

that there are reasonable grounds for believing that the petitioner is not guilty of the offences for which he has been charged. As regards the question as to whether he is likely to commit any offence while on bail, no circumstance has been brought to my notice which would indicate that there is such a likelihood. It is also not the case of the State that the petitioner has been involved in any other NDPS related cases. In this view of the matter, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the concerned trial court.

The application stands disposed of.

18. In the case in hand, the situation is worse because nothing has been recovered from the petitioner. The recovery of contraband is from accused Nos. 1 and 2. It is only on the basis of their statements that the petitioner is sought to be implicated. Insofar as the statement of petitioner under Section 67 of the NDPS Act is concerned, as stated above, he has already retracted the said statement and in these circumstances, unless and until the statement is corroborated the conviction may or may not take place. Thus, the petitioner is entitled to be released on bail. Accordingly, I direct that the petitioner be released on bail on his furnishing bail bond in the sum of Rs. 1 lakh (rupees one lakh only) with two sureties of the like amount to the satisfaction of the trial court subject to the condition that he will not hamper the progress of the case and would not involve himself in similar activities and would deposit his passport with the respondents and will report to the local office of the DRI once in every month.''

6. So, according to the observation made in the above judgment, if there may be a reasonable ground for disbelieving the case of prosecution, the person, who remanded to judicial custody is entitled to bail. But, in the case in our hand, the petitioners have filed this petition for granting anticipatory bail. With regard to the issue of anticipatory bail, the answer is very much available in the judgment of the Himachal Pradesh High Court in **Rakesh Kumar alais Kukka Vs. State of Himachal Pradesh** reported in **2003 Cri.L.J. 3503**. In the said judgment, the Himachal Pradesh High Court has observed as follows:



WEB COPY

Section 37 of the N.D.P.S. Act, 1985, I am of the considered views that application under Section 438, Cr.P.C. would not lie for an offence under the said Act. Because when a reference is made to Section 37 of the N.D.P.S. Act, 1985, it starts with non obstante clause and under what circumstances bail can be granted have been enumerated in the Section itself.

10.Plea based on Section 36A(3) supra is even otherwise ill founded and misconceived. Because admittedly this application is not under Section 439, Cr.P.C. And the petitioner is also not under arrest. Rather on his own showing, he has invoked Section 438, Cr.P.C. In this behalf it may also be noted that legislature substituted Section 36A by Act No. 9 of 2001 as it was originally incorporated vide Act No. 2 of 1989 has only incorporated Sub-section (3) thereof as extracted here-in-above. If it intended to include applicability of Section 438, Cr.P.C. also, there was nothing which prevented the legislature to apply the same also. Admittedly, except for applicability of Section 439(1)(b) of Cr.P.C. this Court has no power to deal with bail application like the present one. On this ground also this application must fail.''

7.Since this petition is filed by the petitioners for anticipatory bail, applying the above decision of the Himachal Pradesh High Court, this Criminal Original Petition is dismissed.

sd/-

20/02/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1 THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM, RAMANATHAPURAM DISTRICT

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. CC to M/S.V.JEYARANI Advocate SR.No.49734

smn2

JAM/23/02/2018/RR/ SAR 2/ 4p-4c

ORDER

IN

CRL OP(MD) No.1206 of 2018

Date :20/02/2018