



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

Thursday, the Twenty Second day of February Two Thousand Eighteen

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PRESENT

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

CRL OP (MD) No.1371 AND 1372 of 2018

A.MURTHY

... PETITIONER/ACCUSED NO.1  
IN CRL OP (MD) NO.1371/2018

1 RAJKUMAR

2 VINOTH

... PETITIONERS/ACCUSED NO.2 & 3  
IN CRL OP (MD) NO.1372/2018

Vs

STATE REP.BY  
THE INSPECTOR OF POLICE  
SWAMIMALAI POLICE STATION,  
SWAMIMALAI,  
TANJORE DISTRICT  
(CR.NO.136 OF 2017)

... RESPONDENT/ COMPLAINANT  
IN BOTH THE PETITIONS

For Petitioners : M/S.KA.RAAMAKRISHNAN Advocate  
IN BOTH THE PETITIONS

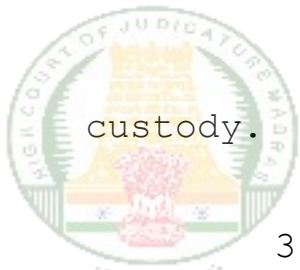
For Respondent : MR.M.ASOKAN, Government Advocate ( Crl. Side)  
IN BOTH THE PETITIONS

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 petitioner in Crl.O.P(MD)No.1371 of 2018 is arrayed as A1 and the petitioners in Crl.O.P(MD)No.1372 of 2018 are arrayed as A2 and A3 respectively in C.C.No.24 of 2017, pending on the file of the learned Additional District and Sessions Judge / Special Judge for E.C.Act Cases, Thanjavur. The petitioners / A1 to A3 were arrested and remanded to judicial custody on 06.05.2017 and they are now in

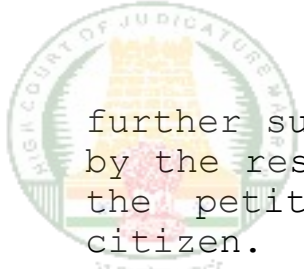


3. There are totally 6 accused in the above case and the charge sheet was also laid on 09.09.2017 and cognizance was taken on 06.10.2017 and is pending. NBW was issued against A4 and is also pending. A5 and A6 were granted anticipatory bail. The earlier bail petitions in CrI.O.P(MD)No.9217 of 2017 filed by A1 to A3; in CrI.O.P(MD)No.11618 of 2017 filed by A2 and A3; in CrI.O.P(MD)No.12869 of 2017 filed by A2 and A3; CrI.O.P(MD)No.16427 of 2017 filed by A2 and A3 and in CrI.O.P(MD)No.9287 of 2017 filed by A1 to A3 and were dismissed by this Court. The present bail petitions are the 5<sup>th</sup> petitions filed by A1 to A3, seeking bail.

4. The case of the prosecution is that the respondent police got a secret information on 06.05.2017 that the accused persons smuggled and transported the contraband Diazepam from Kumbakonam via Neelathnallur, by two cars, bearing Registration No.TN-07-BY-0549 (Swift Car) and No.TN-04-AC-6396 (Tata Indigo) and the Police intercepted the said cars coming towards check-post and on search of the Swift Car, A1 to A3 were available and found a white colour polythene bag, containing 590 gms Diazepam found in it and also on search of Tata Indigo Car, 3 accused (A5 to A6) were available and found some deadly weapons. Both the contraband and deadly weapons were seized from the cars respectively. A case in Crime No.136 of 2017 was registered, for the offences punishable under Sections 22(c) of Narcotic Drugs & Psychotropic Substances Act, 1985 and Section 25(1)(a) of Arms Act, 1959. A1 to A4 were arrested and A5 and A6 escaped from the spot. The seized contraband and deadly weapons were produced before the learned Judicial Magistrate No.II, Kumbakonam, along with the accused persons and were remanded.

5. The learned counsel appearing for the accused persons / A1 to A3 would submit that the respondent police has received an information about the commission of Crime on 06.05.2017 at 15.00 Hrs., whereas, no case has been registered immediately which is against the principles of law and the sampling was not done, as per Section 52(a)(2)(c) of the NDPS Act, and FSL report does not even mention the quantitative and qualitative analysis and the laboratory is duty bound to mention what are all the scientific tests or experiments and in this case it does not reflect the same and non-following the same is in violation of Standing Orders No.1/88 in NCB sample.

6. The learned counsel for the petitioners would



further submit that Section 50 of the said Act was not followed by the respondent police while conducting the search and hence, the petitioners are all innocent persons and law abiding citizen. The counsel, in support of his contentions, has relied on the the Judgment of the Hon'ble Supreme Court in ***E.Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau*** reported in (2008 (5) SCC 161); in ***Sarijabanu & Another Vs. State*** reported in (2004-1-L.W. (Crl.) 308); and in ***Union of India Vs. Mohanlal and Another*** reported in [2016 (3) SCC 379]. The Judgment of the Rajasthan High Court in ***Paramjit Singh Vs. Union of India*** reported in [2000 Crl.L.J. 100] and the unreported Judgments of Karnataka High Court in ***Criminal Petition No.9097 of 2016*** between ***Arun V Vs. State by Inspector of Customs***, dated 4<sup>th</sup> May, 2017; and ***Criminal Petition No.303 of 2017***, dated 28<sup>th</sup> day of April, 2017, between ***Chandru Kunthur Raghuvegowda and State By Inspector of Customs***.

7. The learned Government Advocate (crl.side) appearing for the respondent would contend that confession statement from A1 was recorded in which it has been revealed that the accused purchased the contraband 'Diazepam' from Mandapam, Rameshwaram with an intention to mix the contraband into illicit arrack, which give more kick and sell the same in the local place. He would further contend that A1 is having two cases, for the offences punishable under the Indian Penal Code, registered in Pateeswaram Police Station and A2 was also having two cases punishable under IPC offences, registered in Pateeswaram Police Station and A3 is not having any previous case. The seized contraband in this case is 590 gms of 'Diazepam', which a commercial quantity and hence, under Section 37 of the NDPS Act, the petitioners are not entitled for bail and there is no material to prove that the accused are innocent and hence, bail petitions are liable to be dismissed.

8. The learned Government Advocate (crl.side) would further contend that having regard to the provisions of Section 37 of NDPS 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 said 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 in pre-trial bail stage regarding non-compliance.



9. The learned Government Advocate (crl.side), in support of his contentions, has relied on the Judgments of the Hon'ble Supreme Court in **Union of India Vs. Niyazuddin, SK and Another** reported in **[2017 (3) MWN (Cr.) 304]**; in **Superintendent of Narcotics Control Bureau, Chennai Vs. R.Paulsamy** reported in **[2009 (9) SCC 549]** ; and in **N.R.Mon Vs. Mohd.Nasimuddin** reported in **[2008 (6) SCC 721]**.

10. Perused the materials on record. Heard and considered the rival submissions advanced and also the decisions relied by either side.

11. Admittedly, the petitioners are A1 to A3 and the present bail petitions are filed only after filing the charge sheet for the offences punishable under Sections 22(c) of Narcotic Drugs & Psychotropic Substance Act, 1985 and Section 25(1)(a) of Arms Act, 1959 and was taken cognizance and is pending as C.C.No.24 of 2017, on the file of Additional District and Sessions Judge / Special Judge for E.C.Act Cases, Thanjavur. The petitioners are in judicial custody from the date of registration of the case ie., on 06.05.2017. The quantum of contraband viz., 'Diazepam' is 590 gms, which is commercial quantity, under the NDPS Act and punishable for 10 years RI and heavy fine, if charges are proved in the trial.

12. As per the counter statements filed by the respondents, A1 to A6 are having previous cases punishable for the IPC., offences alone and A3 is not having any previous cases, under the IPC offences. A1 to A3 / Petitioners are not having any previous cases punishable under the NDPS Act. Petitioners are in possession of 590 Gms of contraband viz., Diazepam, which was seized from the Swift car in which, the petitioners were travelled along with the said contraband and after seizure, the petitioners were arrested on the same day.

13. The charges are not framed so far in this case. Sampling of the seized contraband was not done in this case. The petitioner has taken a stand for non-compliance of the Section 52(a) of the NDPS Act, in their earlier bail petitions, which was not accepted by this Court and were dismissed stating that non-compliance, if any, cannot be pre-judged, at the stage of the consideration of bail and not merely saying that no documents has been produced at the pre-trial stage regarding non-compliance. Even after filing the charge sheet in this case, the respondent police has not chosen to file any document for compliance of Section 52(a) of the NDPS Act.



14. On perusal of the FSL Report filed in this case, which is produced by the petitioners' side, would show that it has blindly mentioned as 'Diazepam'. The components found in the sample of the contraband, which was sent for analysis, are not mentioned in it. The quantity of the said Narcotic substance is also not mentioned. The seizure mahazar produced by the petitioner would reveal that two cars ie., one Swift car in which, the contraband was transported and was seized and one TATA Indigo Car in which, deadly weapons were found and seized and two pockets of 10 gms of 'Diazepam' in a Polythene cover and one pocket containing at about 570 gms of 'Diazepam' and the deadly weapons like one Pattakathi and Veecharuval were seized from the first accused, on 06.05.2017, after arrest, which is against the case of the prosecution.

15. The scientific experiments with complete data is not furnished in the FSL Report. The FSL Report is silent about the qualitative and quantitative analysis, if any, conducted. The chemical examination report of FSL is prima facie bereft of any details with regard to any qualitative and quantitative test. In the above stated circumstances, this Court concludes that the provisions of Section 37 of the NDPS Act will not apply in this case and the petitioners are come within the parameters of Section 429 of Cr.P.C., as contended by the petitioners' side.

16. Considering the above facts and circumstances of the case, and change in circumstances of the case and also duration of the custody period, this Court is inclined to grant bail to the petitioners, subject to certain conditions.

17. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties, each for a like sum to the satisfaction of the learned Additional District Judge / Special Judge under E.C.Act, Thanjavur and on further condition that:

**[a]** the petitioners shall attend the hearings before the trial Court regularly subject to its directions.

**[b]** the petitioners shall not directly or indirectly make any inducement, threat, or promise to prosecution witness or any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court to investigating officer.



[c] the petitioners shall not tamper with evidence or witness during trial.

[d] the petitioners shall not abscond during trial and the petitioners shall co-operate with the trial by the concerned Court.

[e] the petitioners shall not involve themselves in any criminal activities.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law, as if the conditions have been imposed and the petitioner released on bail by the learned 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]**.

sd/-  
22/02/2018

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

MPK  
TO

- 1 THE ADDITIONAL DISTRICT JUDGE/  
SPECIAL JUDGE UNDER E.C. ACT, THANJAVUR
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE INSPECTOR OF POLICE  
SWAMIMALAI POLICE STATION, SWAMIMALAI, TANJORE DISTRICT
- 4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY

+2. CC to M/S.KA.RAAMAKRISHNAN Advocate SR.No.2904, 2905

GJM/CM/SAR-4-23.02.2018-6P-7C

ORDER  
IN  
CRL OP(MD) No.1371 & 1372 of 2018  
Date :22/02/2018