



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

Wednesday, the Fourteenth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP (MD) No.2299 of 2018

1 RAJAMANICKAM
2 RAJKUMAR

... PETITIONERS/ ACCUSED NO.1 & 2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.

(CRIME NO.523/2017)

... RESPONDENT / COMPLAINANT

For Petitioners: M/S.S.MUNIYANDY, Advocate for
M/S.V.RAMALINGAM Advocate

For Respondent : M/S.K.SUYAMBULINGA BHARTHI, Govt.Advocate(Crl.Side)

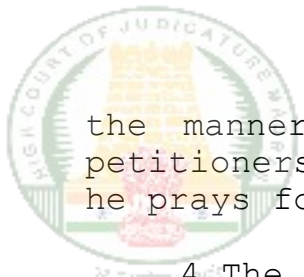
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners / A1 & A2, who were arrested and remanded to judicial custody on 06.09.2017 for the offence punishable under Sections 8(c) r/w 20(b) ((ii) (C) and Section 25 of NDPS Act, in Crime No.523 of 2017, on the file of the respondent police, seek bail.

2.The case of the prosecution is that the first petitioner is none other than the father of the second petitioner. On 06.09.2017, when the respondent police conducted the vehicle check up, they found that the petitioners have illegally transported 44 kgs of ganja in TATA ACE vehicle bearing Registration No.TN-58-U-0549. Hence, case has been registered against the petitioners by the respondent police.

3.The learned counsel appearing for the petitioners submitted that in this case, the respondent police has not followed the provisions under Section 42(1) of NDPS Act, due to which, the mandatory provision is violated by the respondent police. He further submitted that the petitioners were arrested on 06.09.2017 at 16.45 hours but the arrest memo was not preferred by the respondent at the time of arrest. Further, he added that only after made arrest, the respondent police came to the office and registered the case, mentioning of the crime number in the arrest memo creates doubt in



the manner of registering the case. He further added that the petitioners are in judicial custody from 06.09.2017 onwards. Hence, he prays for bail.

4. The learned Government Advocate (Criminal Side) appearing for the State submitted that after arresting the accused, the contraband materials weighing about 44 kgs of ganja, which was possessed by the petitioners had been recovered. According to him part of the investigation is completed.

5. The submissions made by the learned counsel appearing on either side are considered. It is alleged that during the time of occurrence, the petitioners were found in possession of 44 kgs of ganja. As per prosecution, the contraband materials were recovered and part of the investigation is completed. On perusal of records, it could be seen that the petitioners were arrested in this case on 06.09.2017 at 16.45 hours. Further, in the arrest memo, crime number of this case was mentioned as 523 of 2017. Now, on go through the particulars available in the First Information Report, it disclose that after made arrest on 06.09.2017, only at 19.00 hours the case has been registered against the petitioners. Thereby, the crime number of this case was allotted only after 19.00 hours and not before that. It could creates a doubt over the case of prosecution. More over, the petitioners are in judicial custody from 06.09.2017 onwards. So, considering the period of incarceration of the petitioners and also considering the above facts and circumstances of the case, further custodial interrogation of the petitioners may not be necessary for completing the investigation.

6. Considering the above facts and circumstances, this Court is inclined to grant bail to the petitioners. Accordingly, the petitioners are ordered to be released on bail subject to the following conditions:

(i) the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with two sureties, each for a like sum to the satisfaction of the learned Special Court for EC & NDPS Act cases, Madurai.

(ii) the petitioners are directed to appear before the respondent police daily at 10.00 a.m. until further orders.

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

(iv) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners



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].

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sd/-
14/02/2018

/ TRUE COPY /

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

TO

1. THE SPECIAL JUDGE FOR EC & NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.
3. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.V.RAMALINGAM Advocate SR.No.2441

ORDER IN
CRL OP(MD) No.2299 of 2018
Date :14/02/2018

MS/RR-CSL/SAR.4/14.02.2018/3P.6C