



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

Wednesday, the Twenty Fourth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP (MD) No.297 of 2018

1 RAJAMANICKAM
2 RAJKUMAR

... PETITIONERS / ACCUSED Nos.1 & 2

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.
(CRIME NO. 523/2017)

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.M.JAGADEESH PANDIAN, Advocate

For Respondent : Mr.SUYAMBULINGA BHARATHI
Govt. Advocate (Crl. Side)

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

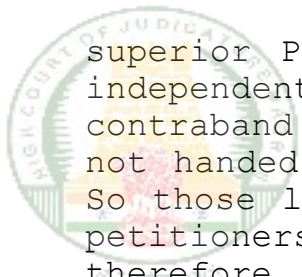
ORDER : The Court Made the following order :-

Reserved on : 12.01.2018
Delivered on : 24.01.2018

The petitioners/Accused Nos.1 and 2, who were arrested and remanded to judicial custody on 07.09.2017 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(C) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, 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 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, a case has been registered against the petitioners by the respondent police.

3.The learned counsel appearing for the petitioner submitted that in this case the respondent has not followed the provisions under Section 42(1) of NDPS Act, due to which, the mandatory provision is violated by the respondent. Further, he submitted that after registration of the case, the same was not intimated to the



superior Police Officers and during the time of investigation, no independent witnesses were examined. He also submitted that the contraband articles, which were recovered from the petitioner are not handed over to the concerned Court immediately after recovery. So those lapses create a reasonable grounds for believing that the petitioners/Accused Nos.1 and 2 are not guilty of the offences and therefore, he prays for bail in favour of the petitioners.

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4. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent submitted that the respondent police after arresting the accused, recovered the contraband articles weighing about 44 Kgs of Ganja from the vehicle, which was used by the petitioners for the commission of offence. Further, no independent witnesses were available at the time of seizing the material object. He further added that at the time of remand itself, the property was produced before the learned Magistrate, who passed an order of remand and only on the instruction given by the learned Magistrate, the property was produced in the Court on the next working day and therefore, there is no violation of Section 42 (1) of the NDPS Act. Accordingly, the reasonable suspicion has not at all arisen in this case and therefore, the petition is not having any merit.

5. The submissions made by the learned counsel on either side disclose that a case has been registered against the petitioners for the offences under Sections 8(c) r/w. 20(b)(ii)(C) and 25 of NDPS Act. Further, the information with regard to the offence was received by the respondent police at 19.00 hours. Subsequently, after registration of the case, the same was received by the learned Judicial Magistrate on the next day at 11.30 hours. So within 24 hours after registration of the case, the FIR reached the learned Judicial Magistrate. Therefore, we cannot presume that the alleged FIR was prepared belatedly. Further, in order to establish the contentions raised by the petitioners with regard to violation of Section 42(1) of the NDPS Act, no documents are enclosed along with the Typed Set of Papers. Furthermore, the copy of the Mahazar is also not enclosed along with the Typed Set of Papers in order to establish that the property was belatedly handed over in the Magistrate Court.

6. Since the petitioners are in possession of 44 Kgs of Ganja, which is commercial quantity, non-enclosing of those documents, does not create any reasonable ground for accepting the case of the petitioners. Accordingly, considering the quantum of contraband article possessed by the petitioners, this Court is not inclined to grant bail to them. Accordingly, this Criminal Original Petition is dismissed.

sd/-

24/01/2018

/ TRUE COPY /



TO

- 1 THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

JAM/31/01/2018/CM-VR/ SAR 4 / 3P-4C

ORDER
IN
CRL OP(MD) No.297 of 2018
Date :24/01/2018