



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

Tuesday, the Tenth day of April Two Thousand Eighteen  
PRESENT

**The Hon`ble Mr.Justice G.R.SWAMINATHAN**

WEB COPY

CRL OP (MD) No.3101 of 2018

EERUDI KUMARRAJA

... PETITIONER /SOLE ACCUSED

Vs

STATE REP.BY  
THE INSPECTOR OF POLICE,  
NIB CID POLICE STATION,  
DINDIGUL DISTRICT.  
(CRIME NO.153 OF 2017)

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.V.MAHENDRAN Advocate  
For Respondent : M/S.A.P.G.OHM CHAIRMA PRABHU,  
Govt. Advocate ( Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner is arrayed as the sole accused. He was arrested by the respondent police on 03.11.2017 and remanded to judicial custody. The case against him is for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as 'the NDPS Act'], in Crime No.153 of 2017, on the file of the respondent police. He seeks bail.

2.The case of the prosecution is that on 03.11.2017 at 10.30 a.m., when the respondent police and the police party conducted a vehicle checkup from Trichy to Madurai Bye-pass Road, near Anjali Roundana, they intercepted a car bearing Registration No.AP-31-Ay-6159, driven by the petitioner and recovered 150 KGs of Ganja in 6 bags from the said Car.

3.Seeking bail, the petitioner moved the Additional Principal Special Court for EC and NDPS Act, Madurai, by filing Cr.M.P.No.3981 of 2017. The said bail petition was dismissed on 13.11.2017.

4.The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged and he has been falsely implicated in this case and there is no previous case pending against the petitioner. He further submitted that mentioning the crime number in the arrest memo issued to the petitioner, vitiates the entire proceedings and therefore, prayed for bail in favour of the petitioner.



5.The learned Government Advocate (Criminal side) appearing for the State submitted that the contraband received from the petitioner is of commercial quantity. He pointed out that the petitioner will have to satisfy this Court that there are reasonable grounds for believing that he is not guilty of the offence in question and that he is not likely to commit any offence while on bail. Therefore, he wanted this Court to dismiss the bail petition.

6.The learned counsel appearing for the petitioner placed considerable reliance upon the decision of this Court reported in 2011 (1) MWN (Cr.) 591 [Siva Kumar and another Vs. The Insepctor of Police, NIBCID, Nagapattinam, Thanjavur District]. This Court has declined to follow the aforesaid decision in Crl.O.P.(MD)No.3700 of 2018, dated 04.04.2018.

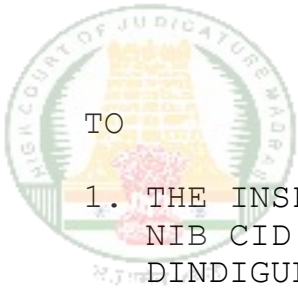
7.This Court gave its anxious consideration to the contentions raised by the learned counsel appearing for the petitioner. It is true that in the decision relied on by the learned counsel appearing for the petitioner, this Court following the decision of the Hon'ble Supreme Court in Ritesh Chakarvarthi Vs. State of Madhya Pradesh reported in 2006 (12) SCC 321 : 2006 (8) Supreme 902 held that non-examination of independent witness would vitiate the search itself. However, the Hon'ble Supreme Court in Gian Chand and others Vs. State of Haryana reported in 2013 (14) SCC 420, following its earlier decision reported in AIR 1988 SC 696 [Appabhai and another Vs. State of Gujarat] held that the prosecution case cannot be thrown out or doubted solely on the ground of non-examination of independent witness. It was further observed following the decision reported in 2013 (14) SCC 434 [Rohtash Kumar Vs. State of Harayana] that while the deposition of witnesses from the Police Department must be subjected to strict scrutiny, the evidence cannot be discarded merely on the ground that they belong to the police force.

8.Looked from any angle, the petitioner's application for bail does not fall within the parameters laid down in Section 37 of the NDPS Act. Admittedly, the contraband in question is of commercial quantity. Therefore, the application for bail cannot be allowed. This Court is of the view that no ground has been placed to entertain a reasonable ground that the petitioner is not guilty of the offence in question. In this view of the matter, this Court does not find any merit in this petition. Hence, this Criminal Original Petition is dismissed.

sd/-  
10/04/2018

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



TO

1. THE INSPECTOR OF POLICE,  
NIB CID POLICE STATION,  
DINDIGUL DISTRICT.

2. THE SUPERINTENDENT,  
CENTRAL PRISON, MADURAI.

3. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP (MD) No.3101 of 2018

Date :10/04/2018

**MS/PN-KAK/VK/13.04.2018/3P.4C**