



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

Wednesday, the Fourth day of April Two Thousand Eighteen

PRESENT

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

CRL OP (MD) No.3700 of 2018

PRAVEEN KUMAR

... PETITIONER/1st ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
NIB CID, MADURAI,
(CRIME NO.250 OF 2017)

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.S.POORNA CHANDRAN, Advocate

For Respondent : M/S.PRABU RAMACHANDRAN,
Government 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 first accused. He was arrested by the respondent police on 13.12.2017 and remanded to judicial custody. The case against him is for the offences punishable under Section 8(c) r/w. Sections 20(b)(ii)(C), 29(1) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as 'the NDPS Act'], in Crime No.250 of 2017, on the file of the respondent police. He seeks bail.

2.The case of the prosecution is that on 13.12.2017 based on the secret information received, the respondent police intercepted a car driven by the petitioner at 8.30 a.m. and recovered 78 KGs of Ganja in 3 gunny bags. The interception took place at 8.30 a.m. The confession was at 9.00 a.m. The arrest memo was issued at 12.15 p.m. and the petitioner was brought to the police station at 1.30 p.m. and an F.I.R. was registered at 1.30 p.m.

3.The petitioner is in judicial custody since then. Seeking bail, he moved this Court by filing Crl.O.P.(MD)No.1233 of 2018. The said bail petition was dismissed on 01.02.2018.



4. The learned counsel appearing for the petitioner primarily raised two grounds:

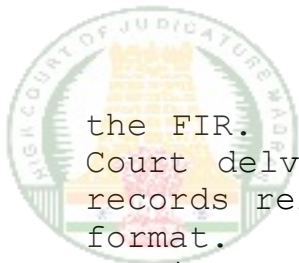
(a) The interception, search and recovery took place at a busy locality in Madurai City. But strangely, no independent witness was procured during the search of the accused. Therefore, in the light of the decision of this Court reported in **2011 (1) MWN (Crl.) 591 [Sivakumar Vs. The Inspector of Police, NIBCID]**, the search itself is vitiated.

(b) Secondly, he contended that in the arrest memo served on the petitioner at 12.15 p.m., the crime number is mentioned. When the FIR itself has been registered only at 1.30 p.m., mentioning the crime number in the arrest memo issued at 12.15 p.m. again vitiates the entire proceedings. He placed considerable reliance upon the judgment of this Court dated 20.11.2017, passed in **Crl.A.No.304 2013 [Rangan Vs. State Rep. By the Inspector of Police, K6, T.P. Chatram Police Station, Chennai]** in this regard.

5. The learned Government Advocate (Criminal side) appearing for the respondent opposed the grant of bail. 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. It was also pointed out that two other accused are involved in this case and they are yet to be arrested. Therefore, investigation cannot be said to have been completed and he wanted this Court to dismiss the bail petition.

6. This Court gave its anxious consideration to both the contentions raised by the learned counsel appearing for the petitioner. It is true that 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.

7. Likewise, this Court is not impressed with the contention that the accused must be believed to be innocent merely because the crime number is mentioned in the arrest memo. It is true that the FIR was registered at 13.30 hours. The learned counsel appearing for the petitioner strongly and emphatically contended that, in this case, in the arrest memo, the crime number is mentioned. It is equally true that the arrest took place before the registration of



the FIR. Though the said contention appears to be formidable, this Court delved a little deep into the matter. It is seen that the records relied on by the petitioner's counsel are in computer typed format. It is obvious that they were prepared in the Police Station. Therefore, this Court wanted to have a look at the hand written arrest memo served on the petitioner. Section 52 of the NDPS Act clearly mandates that any Officer arresting a person under Sections 41, 42, 43 or Section 44 shall as soon as may be, inform him of the grounds of such arrest. In this case, such a memo under Section 52 of the NDPS Act was served on the petitioner at the time of seizure. This Court went through the said hand written arrest memo. It is seen that crime number is not mentioned in the said arrest memo. Therefore, the contention raised on the side of the petitioner goes. 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/-

04/04/2018

/ TRUE COPY /

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

TO

- 1 THE INSPECTOR OF POLICE NIB CID, MADURAI.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
- 3 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP (MD) No.3700 of 2018

Date : 04/04/2018

PK/PN/SAR-4/10.04.2018 : 3P/4C