



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

Wednesday, the Fourth day of July Two Thousand Eighteen

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PRESENT

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

CRL OP(MD) No.8987 of 2018

1 ANANTH
2 RAMESH

... PETITIONERS / ACCUSED Nos.1 & 2

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
VELIPALAYAM POLICE STATION,
NAGAPATTINAM DISTRICT ,
IN CR NO. 97 OF 2018

... RESPONDENT / COMPLAINANT

For Petitioners : Mr.A.SANKARA RAMASUBRAMANIAN, Advocate

For Respondent : Mr.A.ROBINSON, Govt. Advocate (Crl. Side)

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

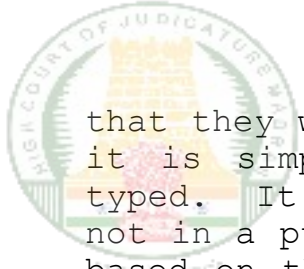
ORDER : The Court Made the following order :-

The petitioners are in custody since 12.04.2018 for the offences under Sections 8 (c), r/w. 20 (b) (ii) (c) of NDPS Act 1985 in Crime No.97 of 2018 on the file of the respondent Police.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the respondent.

3.The contraband involved in this case is 20 Kilograms and 200 Grams of Kanja. It is a commercial quantity. To grant bail in such cases, the standard set out in Section 37 of NDPS Act must be fulfilled.

4.The learned counsel appearing for the petitioners pointed out that the contraband was seized in the house premises of the first petitioner. The arrest of the petitioners took place at 04.10 p.m. on 12.04.2018. The Observation Mahazar was prepared at 17.15 hours. Seizure was at 17.30 hours. The First Information Report itself was registered at 06.30 p.m. However in the arrest memo as well as the Mahazars Crime Number is mentioned. What arose the suspicion of this Court is that the arrest memo as well as the Mahazars have been computer typed. The claim of the prosecution is



that they were prepared at the scene of occurrence. If that be so, it is simply impossible that they could not have been computer typed. It is not in dispute that the seizure of the contraband was not in a public place. The First Information Report was registered based on the source information received by the Police. Therefore Section 42 of the NDPS Act ought to have been complied with. Section 42(2) of the NDPS Act reads as follows:-

"(2)Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

5. In this case, this Court wanted to know whether this requirement was complied with. The files were produced before me. There is nothing on record to show that the immediate official superior of the respondent Police received the copy of the intimation said to have been sent by the respondent. Thus, there is a violation of the statutory requirement laid down under Section 42 (2) of the NDPS Act. It has been held that this is a mandatory requirement. NDPS Act is a harsh statute. Therefore, all the procedural safeguards laid down in the Act must be scrupulously followed. In this case, it is seen that those procedures have not been adhered to. Therefore the petitioners have satisfied this Court that there are reasonable grounds for believing that they are not guilty of offences in question. But this threshold bar is alone not sufficient to be overcome. There is one more impediment. It must also be shown that the petitioners are not likely to commit any offence while on bail.

6. The Prosecution fairly submits that the second petitioner Ramesh is not having any previous case. But the first petitioner Ananth is having previous cases which also arose under the very same NDPS Act. Interestingly, even the mother of the first petitioner Ananth viz., Rani, wife of Mookiah is also figuring as an accused in Crime No.226 of 2016 registered on the file of the respondent Police Station. She was allegedly in possession of 600 Grams of Diazepam powder. Therefore, this Court is unable to form opinion that the first petitioner is not likely to commit similar offence while on bail. Hence this Court is constrained to dismiss this Criminal Original Petition as far as the first petitioner is concerned. The first petitioner was also found to be in possession of the commercial quantity of Diazepam powder and hence Crime No.463 of 2016 was registered against him by the respondent Police. Therefore, while dismissing this Criminal Original Petition as far as the first petitioner is concerned, this Court grants bail to the second petitioner.

7. Taking note of all these aspects, this Court is inclined to grant bail to the second petitioner with certain condition. Accordingly, the second petitioner is ordered to be released on bail, subject to the following conditions;



(i) the second petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge / Special Judge under E.C. Act Cases, Thanjavur.

(ii) the second petitioner is directed to appear before the respondent police as and when required for interrogation.

(iii) on breach of any of the aforesaid conditions, the Magistrate/Trial Court is entitled to take appropriate action against the second petitioner in accordance with law as if the conditions have been imposed and the second petitioner 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].

sd/-
04/07/2018

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

TO

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

+1. CC to MR.G.KARNAN Advocate SR.No.12091

TSG
JAM/05/07/2018/ CM/ASVM/3P-6C

ORDER
IN
CRL OP(MD) No.8987 of 2018
Date :04/07/2018