



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

Tuesday, the Tenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL OP (MD) No.9713 of 2018

VIJAYAKUMAR

... PETITIONER/SOLE ACCUSED

Vs

THE STATE REP.BY,
THE INSEPCTOR OF POLICE
NIBCID, THENI,
CRIME NO. 219 OF 2017

... RESPONDENT / COMPLAINANT

For Petitioner : MR.M.RAMU Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner/sole accused who was arrested and remanded to judicial custody on 26.12.2017 for the alleged offences punishable under Sections 8(c) r/w. 20(b)(ii)(C) and 25 of NDPS Act, 1955, in Crime No.219 of 2017, on the file of the respondent police, seeks bail.

2.The case against the petitioner is that the petitioner was found in possession of 120 kgs of Kanja.

3.On the side of the petitioner, it is stated that the petitioner is falsely implicated in this case and the respondent police did not follow the mandatory provision under Sections 42, 50, 52(A) and 57 of NDPS Act. It is stated that though the search was made on information, the police personnal failed to send information to the higher authorities which is mandatory under Section 42 of the NDPS Act. It is further stated that the sample Kanjas are not taken in the presence of the gazette Officer as per the mandatory provision under Section 52(A) of NDPS Act. He has submitted that the petitioner has already filed two bail petitions and the same were dismissed as withdrawn. The petitioner is in custody from 26.12.2017. It is further stated that in similar case in Crl.O.P. (MD)No.2708 of 2018 dated 13.03.2018, this Court has already

released some accused on bail.

4. On the side of the petitioner, the learned counsel relied upon the Judgment passed by the Hon'ble Supreme Court in the case **Rajinder Singh v. State of Haryana** reported in **(2011) 8 Supreme Court Cases 130**, which reads as follows:

"Sections 42(1)(2) - Entry, search and seizure - Requirement of writing down and conveying information to immediate official Superior - Total non-compliance with - Impermissibility of - Delayed compliance with a satisfactory explanation - Permissibility of - Dispatch of wireless message- whether amounts to compliance - Held, total non-compliance with Sections 42(1) and (2) is impermissible but delayed compliance with a satisfactory explanation for delay can, however, be countenanced."

5. In support of the Judgments in the case **Sukhdev Singh v. State of Haryana** reported in **(2013) 2 Supreme Court Cases 212** and in the case **Dadan Singh v. State of Uttar Pradesh** reported in **1993 CrL. J. 1785** are cited.

6. On the side of the petitioner, the learned counsel relied upon the Judgment passed by the Madhya Pradesh High Court in the case **Mari Appa v. State of Madhya Pradesh** reported in **(1990) Criminal Law Journal 1990**, which reads as follows:

"Violation of procedural safeguards under Act - Accused is entitled to bail."

7. On the side of the petitioner, the learned counsel relied upon the Judgment passed by the Hon'ble Supreme Court in the case **Union of India v. Mohanlal and Another** reported in **(2016) 1 Supreme Court Cases (Cri) 864**, which reads as follows:

"In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct."

8. On the side of the petitioner, it is stated that whether electronic or manual scale is used to measure the quantity of the contra band, is not stated, and that the accused is in custody from 26.12.2017 and prayed the petitioner to be let out on bail.

9. On the side of the respondent, it is stated that on 26.12.2017, based on secret information, the respondent and his men conducted vehicle check up near Veerapandi Bypass Birivu, Theni-Kumbum Road, at about 08.10 a.m., the petitioner's vehicle bearing Registration No. AP-31-CY-4732 was intercepted. The petitioner ran away from the place of occurrence and the police recovered 9 bags of 30kgs of kanja (total 271 Kgs). Thereafter, the petitioner was arrested and was remanded to judicial custody and it is stated that <https://hdservices.chus.gov.in/services/> is already filed before the concerned Court. He would further submit that the accused belongs to Karnataka and there is a every chance for him to abscond and if he is released on bail,

he will indulge in similar offence. He vehemently oppose to grant bail to the petitioner.

10. Records perused. The petitioner belonged to Karnataka. From the vehicle bearing Registration No. AP-31-CY-4732, the respondent police seized 9 bags of 30kgs (270 kgs) of kanja and the contraband which was seized from the petitioner is of commercial quantity. The points raised by the learned counsel appearing for the petitioner on violation of Sections 42, 50, 52(A) and 57 of NDPS ACT can be decided only after the completion of the trial and these points cannot be considered at this stage. The aforesaid citations are not applicable at the present stage of the case. Considering the facts and circumstances of the case and also considering the objections raised on the respondent side, this Court is not inclined to grant bail to the petitioner. Hence, this criminal original petition is dismissed.

sd/-
10/07/2018

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

TO

- 1 THE INSEPCTOR OF POLICE, NIBCID, THENI,
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

+1. CC to M/S.M.RAMU Advocate SR.No.72063

MRN
GJM/CSL/ASVM/19.7.18-3P-5C

ORDER
IN
CRL OP(MD) No.9713 of 2018
Date :10/07/2018