



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

Thursday, the Thirteenth day of December Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.19734 of 2018

P.KARTHICK

... PETITIONER / ACCUSED No. 3

Vs

THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.

... RESPONDENT / COMPLAINANT

For Petitioner : MR.M.SHAKUL HAMEED Advocate

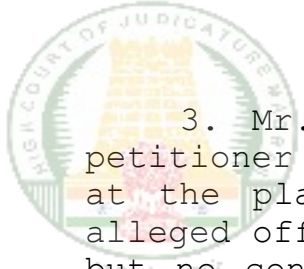
For Respondent : MR.ARUL VADIVEL @ SEKAR,
SPECIAL PUBLIC PROSECUTOR FOR CUSTOMS CASES

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

ORDER : The Court Made the following order :-

The petitioner / A3, who was arrested by the respondent Police on 23.07.2018, for the offences punishable under Sections 8(c) r/w.20(b)(ii)(C), 23, 28 and 29 of NDPS Act, 1985, in O.R.No.4 of 2017, on the file of the respondent, seeks bail.

2. The case of the prosecution is that on 17.12.2017, on the basis of secret information that around 50 Kgs of dry Ganja of Indian Origin have been kept in the seashore of Nochiyurani, to be smuggled out of India to Srilanka. Immediately, a team of officers rushed to the spot viz., 'Nochiyurani Seashore', Ramnad District, along with two independent witnesses. At about 01.00 Hrs, on 18.12.2017, the officers noticed a Boat was coming from inside the sea to 'Nochiyurani Seashore' and three persons came, carrying with two gunny bags and one parcel over their head and started moving towards the Boat. Immediately, the officers tried to catch the accused. However, they could apprehend only the present accused, who tried to escape by sailing into the sea and other two persons escaped in the dark. The seized contraband was 42 Kgs.



3. Mr.M.Shakul Hameed, the learned counsel appearing for the petitioner would submit that the petitioner was not at all present at the place of occurrence and he is no way connected with the alleged offence. Further, the house of the petitioner was searched, but no contraband was seized by the Police. Further, according to the prosecution, they took two mahazar witnesses viz., Mari and Sankar and they have signed on 17.12.2017, as if they were at the occurrence place, whereas, the date of 18.12.2017 is mentioned, as the date of taking mahazar. Therefore, there is severe contradiction in recording of the statement of persons ie., witnesses at the time of mahazar. Continuing his argument, the learned counsel would submit that confessional statement was recorded in the night hours more fully at 12.00 p.m., with the torch light only. As per Section 42 of NDPS Act, such seizure or recording must take place between sunrise and sunset. The respondent miserably failed to follow the statutory provisions enumerated under Sections 42, 50, and 67 of the said Act.

4. Mr.Arul Vadivel @ Sekar, the learned Special Public Prosecutor for Customs Cases, for the respondent filed a detailed counter contending affidavit inter alia contending that there are totally four accused in this case and the petitioner is A3 and this is the 4th bail application and the earlier three bail applications have been withdrawn / dismissed. He also submitted that on a specific information, received and recorded on 17.12.2017, around 50 Kgs of dry Ganja of India Origin have been kept in the seashore of Nochiyurani and the same is to be smuggled out of India to Sri Lanka. The team of officers rushed to the spot along with two independent witnesses, kept surveillance. At about 01.00 hrs., on 18.12.2017, the officers noticed one Boat is coming from inside the sea to Nochiyurani Sea Shore. On arrival of the boat, three persons came out of their hiding in the opposite side carrying two gunny bags covered with adhesive taps on their heads and started moving. Immediately, the officers ran towards them and try to catch them. However, they could apprehend only one person. The officers detained two gunny bags and one person. The detained one person viz., P.Karthick and during interrogation, he revealed about the others. The parcels were opened in the presence of two independent witnesses. 42 Kgs of Ganja found seized. Thereafter, the said Karthick had given a statement under Section 67 of NDPS Act, on 18.12.2017 and 19.12.2017 wherein, he confessed that he involved in smuggling with other accused. As the follow-up action, the remaining three accused were arrested and produced before the concerned Magistrate. In this case, one of the accused viz., Jesudoss is yet to be arrested. All the statutory compliance have been complied with. The petitioner has also given a statement under Section 67 of NDPS Act, confessing to the crime.

5. Considering the entire facts and circumstances of the case and also considering the fact that 42 Kgs of 'Ganja' had been seized from the petitioner in excess of commercial quantity, the prayer of the petitioner for bail has earlier been rejected, charge sheet has



been filed and in view of Section 37 of the NDPS Act, the prayer of the petitioner for bail is refused and this Criminal Original Petition stands dismissed.

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sd/-
13/12/2018

/ TRUE COPY /

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

TO

- 1 THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.
- 2 THE OFFICER IN-CHARGE
DISTRICT PRISON, RAMANATHAPURAM
- 3 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI.

+1. CC to MR.M.SHAKUL HAMEED Advocate SR.No.23206
+1. CC to MR. MR.ARUL VADIVEL @ SEKAR, Advocate SR.No.23269

ORDER
IN
CRL OP(MD) No.19734 of 2018
Date :13/12/2018

MSI/JC/SAR-III/20.12.2018-3P/6C