



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

Monday, the First day of October Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD) No.14643 of 2018

1 JAYAKUMAR
2 CHANDRAN
3 RAJATHEVAR

... PETITIONERS / ACCUSED NOS.1 TO 3

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
USILAMPATTI TALUK POLICE STATION,
MADURAI DISTRICT.
(CR.NO.113/2018)

... RESPONDENT / COMPLAINANT

For Petitioner : MR.M.JEGADEESH PANDIAN Advocate

For Respondent : MR.V.NEELAKANDAN, Additional Public Prosecutor

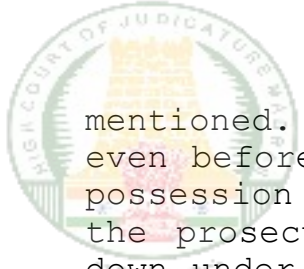
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners are in judicial custody since 21.05.2018 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 in Crime No.113 of 2018 on the file of the respondent police. They seek bail.

2.The case of the prosecution is that based on the secret information, the respondent went to Poliyampatti tank, at that time, the police found that the three persons/petitioners were in possession of 22 kgs of ganja, totally 70 kgs of ganja were seized from the petitioners. Hence, they were arrested and remanded to judicial custody.

3.The learned counsel appearing for the petitioners would submit that based on the secret information received by the respondent police at about 6.00 a.m, they reached the place at about 6.45 a.m. Thereafter, they intercepted the accused persons and explained their rights to search them, for which, they consented for search by the respondent police itself and they did not want to move the search before the Judicial Magistrate or any gazetted officer. In each of the said consent letter, the quantity of ganja was

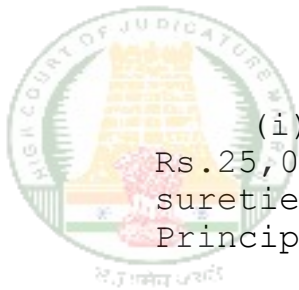


mentioned. The said letters were prepared by the respondent police, even before the search from the accused persons. They were found in possession of ganja as mentioned in the consent letter. Therefore, the prosecution is completely failed to follow the procedure laid down under NDPS Act. Further, he contended that the entire story of the prosecution is not believable one and they have no previous antecedents. The learned counsel further contended that the false case has been foisted as against the petitioners. They are in incarceration from 21.05.2018 onwards. Hence, he prays for bail.

4.The learned Additional Public Prosecutor appearing for the respondent has filed a counter affidavit, in which, he stated that the case of the prosecution is that the respondent police received the secret information at about 6.30 p.m on 21.05.2018. On seeing the police party, the petitioners attempted to escape from the place. But the police party intercepted them and explained their rights with regard to search. The petitioners have also given their consent for search by the Sub Inspector of Police and stated that they have also not inclined to go before the Judicial Magistrate or Gazetted Officer. Following the search, the petitioner were found in possession of 22 kgs of ganja. The respondent police strictly complied the procedure under Section 42 of NDPS Act. Further, he contended that the said contraband is in commercial quantity and therefore, there is a bar under Section 37 of NDPS Act. Hence, he vehemently opposed the grant of bail to the petitioners.

5.On perusal of the documents produced by the petitioners, it seems that at about 6.30 a.m on 21.05.2018, the respondent received the secret information. When they intercepted the petitioners, they tried to escape from the place of occurrence. Subsequently, the respondent police searched them with search letter, for which the petitioners gave consent to search by the respondent police itself. But, it is very curious to note that the said consent letters were signed by the accused persons, the respondent police mentioned the quantity of ganja, which allegedly opposed by the petitioners herein. It is very unfortunate to state that the respondent police without following any mandatory provision as required under NDPS Act, they searched the accused persons. It is also curious to note that before searching the persons, the possession and quantity of ganja was mentioned in the search letter. Therefore, this Court feels that the respondent police has not followed the mandatory provisions as required under NDPS Act. Further it seems that the petitioners have no previous antecedents and also they are in incarceration from 21.05.2018 onwards.

6.Considering the above facts and circumstances and also considering the period of incarceration of the petitioners, this Court is inclined to grant bail to the petitioners. Accordingly, the petitioners are ordered to be released on bail subject to the following conditions:



(i) the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court for EC and NDPS Case, Madurai.

(ii) the petitioners shall appear before the respondent police daily at 10.30 a.m. until further orders;

sd/-
01/10/2018

/ TRUE COPY /

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

TO

- 1 THE PRINCIPAL SPECIAL COURT
FOR EC AND NDPS CASES MADURAI.
 - 2 THE INSPECTOR OF POLICE
USILAMPATTI TALUK POLICE STATION,
MADURAI DISTRICT.
 - 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S. M. JEGADEESH PANDIAN Advocate SR.No. 18683

ORDER
IN
CRL OP(MD) No.14643 of 2018
Date :01/10/2018

JM/MMS/SAR 3/01.10.2018/3P/6C