



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

Tuesday, the Fourth day of December Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.19902 of 2018

S.SURESH

... PETITIONER / ACCUSED NO.1

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
NIBCID, KANYAKUMARI,
KANYAKUMARI DISTRICT.
IN CRIME NO. 61 OF 2017

... RESPONDENT / COMPLAINANT

For Petitioner : MR.M. RAMU Advocate

For Respondent : MR.S.CHANDRASEKAR, Additional Public Prosecutor

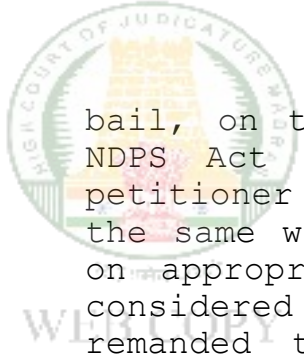
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner / A1 was arrested by the respondent police on 17.12.2017, for the offences punishable under Sections 8(c) r/w. 20 (b)(ii)(C) and 25 of NDPS Act, in Crime No.61 of 2017, on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 17.12.2017, at about 12.30 p.m, based on a secrete information, the respondent Police conducted a vehicle check up near Moopandhal Essaki Temple and at about 3.45 p.m., a car viz., Toyota Etios Liva, Silver Colour, bearing Registration No.TN-37-CA-9297, passed without stopping. The car was chased and stopped by the respondent and found 72 Kgs of Ganja in two white bags, in the car, and arrested the accused and seized the contraband.

3. The learned counsel appearing for the petitioner would submit that earlier, the petitioner had moved an application for bail before this Court in Crl.O.P(MD)No.8103 of 2018 and this Court was pleased to grant bail on 23.05.2018. Pursuant to that, the respondent moved an application before this Court in Crl.M.P.(MD) No.4159 of 2018 in Crl.O.P(MD)No.8103 of 2018, for cancellation of



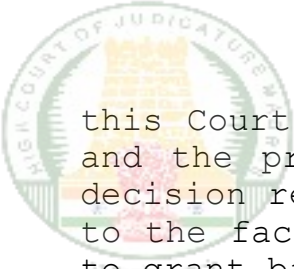
bail, on the ground that there was no reference of Section 37 of NDPS Act and the said petition was allowed. Subsequently, the petitioner preferred SLP No.6626 of 2018 before the Apex Court and the same was dismissed with liberty to move fresh bail application on appropriate grounds and appropriate time and that shall be considered on merit. In the meantime, the petitioner has been remanded through PT Warrant, on 03.07.2018 and now he is in confinement from that date onwards.

4. Continuing further, the learned counsel would submit that the respondent Police had not followed the statutory provisions contained under the NDPS Act. He also submitted that the search conducted by the respondent is a busy locality, but not independent witnesses were witnessed and the time shown in the mahazar, arrest card and arrest memo are prior to the time of FIR. Hence, the accused have been falsely implicated in this case. The learned counsel, in support of his contention, has relied on a decision of the Hon'ble Apex Court in **Sukhdev Singh Vs. State of Haryana** reported in **(2013) 2 MLJ 212**.

5. The learned Additional Public Prosecutor appearing for the respondent has filed a detailed counter. He submitted that based on a secrete information, the respondent Police conducted a vehicle check up near Moopandhal Essaki Temple and at about 3.45 p.m., a car viz., Toyota Etios Liva, Silver Colour, bearing Registration No.TN-37-CA-9297, passed without stopping. The car was chased and stopped by the respondent and found 72 Kgs of Ganja in two white bags in the car, and arrested the accused and seized the contraband, strictly after completing the formalities under the provision of NDPS Act. He would further submit that there is a specific bar being incorporated in Section 37 of NDPS Act, for granting bail to the accused persons, who have indulged in possessing, transporting any narcotic substances in commercial quantity. Therefore, he strongly objected for grant of bail to the petitioner.

6. I have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.

7. In the considered opinion of this Court, the petitioner has not made out any case to release him on bail as no new ground has been urged except that the petitioner had already been released on bail by this Court and due to non-compliance of the order, he has been arrested on P.T.Warrant. Except this contention, rest of the contentions are relating to the factual aspects. The offence alleged against the petitioner has a serious adverse impact on the fabric of the Society. On perusal of the records would show that in this case, 72 Kgs of Ganja had been seized from the accused, which is manifold more than the commercial quantity. The contention of the petitioner with regard to discrepancies are the points to be decided during trial. In view of the factual aspects of the above case,



this Court finds that the petitioner is in possession of contraband and the presumption as per the Act is against him. Further, the decision relied by the counsel for the petitioner is not applicable to the facts of the present case. Hence, this Court is not inclined to grant bail to the petitioner.

8. In the result, this Criminal Original Petition is dismissed.

sd/-
04/12/2018

/ TRUE COPY /

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

TO

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

ORDER
IN
CRL OP(MD) No.19902 of 2018
Date :04/12/2018

JM/JC/SAR 2/10.12.2018/3P/4C