



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

Wednesday, the Twenty Fourth day of October Two Thousand Eighteen

PRESENT

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

CRL OP(MD) No.15041 of 2018

VIJAYAKUMAR

... PETITIONER/ SOLE ACCUSED

Vs

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.A.P.G.OHM CHAIRMA PRABHU,
Govt. Advocate (Crl. Side)

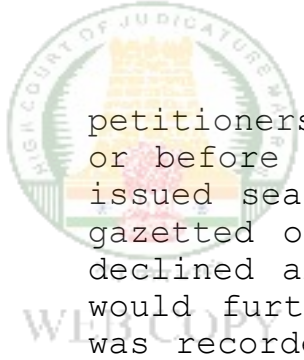
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 26.12.2017 for the offence under Sections 8(c) read with 20(b)(ii) (C) and 25 of N.D.P.S. Act, 1985, in crime No.219 of 2017 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 26.12.2017, at about 08.10 a.m., on secret information, the respondent along with police party conducted vehicle checkup near Veerapandi bye pass pirivu, Theni - Kumbum Road. At that time, the respondent police intercepted the vehicle bearing Registration No.AP 31 CY 4732 and on search, they found 30 kg of ganja in a bag. Hence, the petitioner was arrested and remanded to judicial custody and a case has been registered.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent person and he has been falsely implicated in this case. The respondent police did not follow the mandatory provisions under Sections 42, 50 and 52(A) of N.D.P.S. Act. The alleged FIR would clearly show that the provision of Section 42 of the Act is mandatory to record secret information prior intimation to higher authorities and the information should have forwarded to the higher authorities for further action. He would further submit that as per Section 50 of NDPS Act, the



petitioners ought to have been produced before the gazetted officer or before the Judicial Magistrate. Admittedly, the petitioner was issued search memo and explained the rights to produce before the gazetted officer or before the Judicial Magistrate, for which, he declined and permitted the police officer himself to conduct. He would further contend that confession statement of the petitioner was recorded and the contraband was seized from the accused person and he was arrested at about 12.30 hours. At about 13.00 hours, the police reached the police station and registered the case in crime No.219 of 2017. Whereas, in the arrest intimation recorded at the time of 12.30 hours, crime number has been reflected and also in the arrest memo. He would further submit that the confession statement has been recorded in typewritten. Therefore, it is completely a false case foisted as against the petitioner for statistical purpose. Therefore, he prayed for bail.

4.The learned Government Advocate (criminal side) would submit by way of filing counter that the procedural lapse cannot be considered at the time of considering the bail petition. The investigation is pending and the respondent is yet to file charge sheet. He would further contend that Section 37 of NDPS Act, clearly states that no person can be an accused for offences involving commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The limitations on granting of bail specified in clause (b) of sub-section (1) of NDPS Act are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting bail. Insofar the law relating to enlarging and NDPS offender found with commercial quantity, it is well settled that by the reading of the non-obstinate clause in Section 37 of NDPS Act that the power to grant bail to a person accused of having committed offence under NDPS Act is not only subject to the limitations imposed under Section 439 of Code of Criminal Procedure, 1973, it is also subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub section (i) of Section 37 of NDPS Act and apart from giving an opportunity to the Public Prosecutor to oppose the application for such release the other twin conditions 1)the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of alleged offence' and (ii) that he is not likely to commit any no offence while on bail, have to be satisfied. Inasmuch as there is no materials submitted to prove that the petitioner/accused herein is innocent. Thus, he prayed for dismissal of the petition.

5.It is seen from the arrest intimation and memo, it was recorded at 12.30 hours on 26.12.2017 hours and it contains crime No.219 of 2017. However, the case has been registered at about in 13.00 hours. Further, the petitioner is not having any previous case. Further, under Section 37 of NDPS Act, 1995, this Court



satisfied that there are reasonable grounds for believing that the petitioners are not guilty of the alleged offence. Perusal of the confession statement would show that the same has been recorded in typewritten, when there is no instrument available in the place of occurrence to record the confession statement in typewriter. Therefore, this Court is inclined to grant bail to the petitioners.

6. Accordingly, the petitioner is ordered to be released on bail, subject to the following conditions:

(i) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties, each for a like sum to the satisfaction of the learned Principal Special Court for EC and NDPS Act, Cases, Madurai;

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

sd/-
24/10/2018

/ TRUE COPY /

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

TO

1. THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI.

2. THE INSEPECTOR OF POLICE
NIBCID, THENI.

3. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.M.RAMU Advocate SR.No.20070

ORDER
IN
CRL OP(MD) No.15041 of 2018
Date : 24/10/2018

MS/PN/SAR-2/24.10.2018/3P.6C