



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

Thursday, the Sixth day of December Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.15872 of 2018

P. RAJENDRAN

... PETITIONER / ACCUSED NO.3

Vs

STATE REP.BY

INTELLIGENCE OFFICER

NARCOTICS CONTROL BUREAU, MADURAI SUB ZONE,
MADURAI.

(NCB F. NO. 48/1/01/2018)

... RESPONDENT / COMPLAINANT

For Petitioner : Mr. B.GURUMURTHY Advocate

For Respondent : Mr.ARUL VADIVEL @ SEKAR, Special Public Prosecutor
for NCB CASES

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

ORDER : The Court Made the following order :-

The petitioner / A3 was arrested by the respondent on 10.01.2018, for the offences punishable under Sections 8(c) r/w. 20 (b)(ii)(C) and 25 & 27(A), 28 and 29 of NDPS Act, in NCB.F.No.48/1/01/2018, on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 09.01.2018, based on secret information, the respondent conducted a vehicle check up near Valavanthankottai Toll Plaza, Thuvakudi, Trichy, and at that time, a Truck, bearing Registration No.TN-28-AB-5177 was intercepted by the respondent and found 350 Kgs of Ganja, which was seized under mahazar and arrested the accused / A1 & A2. Base on their confession, the Petitioner / A3 was arrested on 10.01.2018.

3. Mr.Shanmugavelayutham, learned Senior Counsel appearing for Mr.B.Gurumurthy, for the petitioner would submit that the respondent Police had not followed the statutory provisions contained under the NDPS Act. He also submitted that the time shown in the mahazar, arrest card and arrest memo are prior to the time of FIR. Hence, the accused had been falsely implicated in this case. The learned <https://hcservices.ecourts.gov.in/hcservices/> counsel, in support of his contentions, has relied on a decisions of the Hon'ble Apex Court in **Kanhaiyalal Vs. Union of India** reported

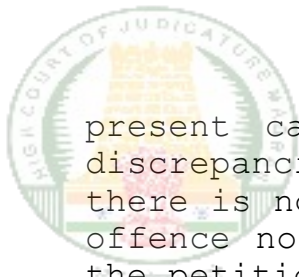
in (2008) 1 MLJ (Cr1) 896 (SC); in *Union of India Vs. Bal Mukund and Ors* reported in (2009 CRI.L.J.2407) in *Tofan Singh Vs. State of Tamil Nadu* reported in (2013) 16 SCC 31.

4. Mr.Arulvadivel @ Sekar, the learned Special Public Prosecutor for NCB Cases, appearing for the respondent has filed a detailed counter. He submitted that based on secret information, the respondent conducted a vehicle check up near Valavanthankottai Toll Plaza, Thuvakudi, Trichy, and at that time, a Truck, bearing Registration No.TN-28-AB-5177 was intercepted by the respondent and found 350 Kgs of Ganja, which was seized under mahazar and arrested the accused / A1 & A2. Based on their confession, the Petitioner / A3 was arrested on 10.01.2018, who was waiting to receive the contraband at Kottur.

5. Adding further, the learned Special Public Prosecutor submit that Section 37 of the NDPS Act insists upon two conditions for enlarging an accused on bail. The 1st condition is that the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and the 2nd condition that the court should satisfy that the accused is not likely to commit any offence while on bail. There are possibilities of escaping of the petitioner from the clutches of law, if enlarged on bail and hampering of investigation. Further, the statement recorded under Section 67 of NDPS Act should be taken into consideration while deciding the bail application and the twin conditions laid down in Section 37 of the NDPS Act are not alternative but cumulative. There are overwhelming materials against the petitioner revealing his active involvement in the commission of offence. Therefore, he strongly objected to, for grant of bail to the petitioner. In support of his contention, he relied on the Judgments of Hon'ble Apex Court in *Daddu Alias Tulsidas Vs. State of Maharashtra* reported in (2000) 8 SCC 437; in *Union of India Vs. Shiv Shanker Kesari* reported in (2007) 7 SCC 798 ; in *N.R.Mon Vs. Md.Nasimuddin* reported in AIR 2008 SC 2576 and in *Satpal Singh Vs. State of Pubjab* reported in 2018 SCC online SC 415.

6. I have heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor for NCB Cases, for respondent and also carefully perused the materials available on record.

7. Considering the above facts and circumstances of the case and also considering the fact that though the contraband had not been seized from the petitioner/A3, the contraband, which had been seized from the co-accused is manifold more than the commercial quantity and on the confession of co-accused, the respondent had arrested the petitioner, when he was waiting to receive the same, and in view of Section 36A and the embargo contained in Section 37 (1) (b) (ii) of the NDPS Act, I am not inclined to grant bail to the petitioner. The decisions relied on by the learned Senior Counsel appearing for the petitioner is not applicable to the facts of the



present case. The contention of the petitioner with regard to discrepancies are the points to be decided during trial. Further, there is no reason to hold that the petitioner has not committed the offence nor is there any reason to hold that, if released on bail, the petitioner will not commit any offence of similar nature.

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

sd/-
06/12/2018

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

TO

- 1 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU, MADURAI SUB ZONE,
MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. CC to Mr. B.GURUMURTHY Advocate SR.No.22750,22941

+. CC to Mr. Mr.ARUL VADIVEL @ SEKAR, Special Public Prosecutor for
NCB CASES SR.No.22814

PS/MMS/SAR-1/13/12/2018/3P/7C

ORDER
IN
CRL OP(MD) No.15872 of 2018
Date :06/12/2018