



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

Tuesday, the Ninth day of October Two Thousand Eighteen

PRESENT

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

CRL OP (MD) No.17623 of 2018

KAVITHA

... PETITIONER / ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
CHEEKKANOORANI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.171 OF 2018

... RESPONDENT / COMPLAINANT

For Petitioner : MR.R.ANAND, Advocate
For Respondent : Mr.V.NEELAKANDAN, Additional Public Prosecutor

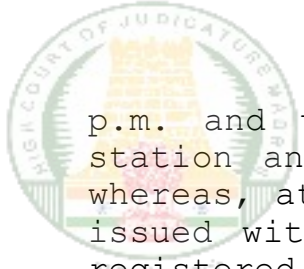
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/A2, who was arrested and remanded to judicial custody on 28.05.2018 for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of Narcotic Drug and Psychotropic Substances Act, in Crime No.171 of 2018, seeks bail.

2.The case of the prosecution is that on 28.05.2018, on secret information, the respondent conducted vehicle checkup near Puliyanakulam Othaveedu Railway Gate. At that juncture, the petitioner and another coming with the possession of one gunny bag. On identification by the informer, the respondent enquired them. On suspicion, they were issued search memo and informed their right to search before Gazetted Officer or Magistrate, which they allowed the police personnel to conduct search on them. Thereafter, the petitioner and another themselves handed over the white colour plastic gunny bag to the respondents. After verification, the respondent found that it was kanja weighed about 42 kgs and seized the contraband and arrested the petitioner and another on 28.05.2018 and remanded them to judicial custody and registered the complaint in crime No.171 of 2008 for the offences stated above.

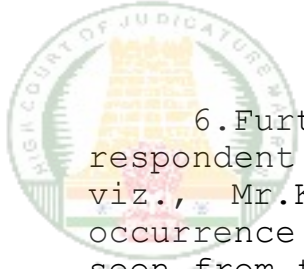
3.The learned counsel appearing for the petitioner would submit that this is a second bail petition to the petitioner and the petitioner is arraigned as A2. He would further contend that as per the FIR, the petitioner was arrested on 28.05.2018 at about 08.45



p.m. and thereafter, the accused persons were brought to police station and registered a case at about 10.00 p.m. on 28.05.2018, whereas, at the time of arrest of the petitioner, the petitioner was issued with arrest card, which contains the crime No.171 of 2018 registered for the offence as stated above as against the petitioner. Even as per the FIR, the accused were brought to police station at 10.00 p.m. and the respondent registered a case. He would further contend that in the FIR, it has been stated that on secret information, the respondent conducted vehicle checkup near Puliyangulam Othaveedu railway gate and when the petitioner and another were coming with the possession of gunny bag containing kanja, as identified by the informer, the respondent enquired them and when they were issued with search memo and they themselves handed over the white colour polythene bag containing kanja weighing about 42 kgs. Whereas, in the remand report while submitting before the concerned Judicial Magistrate, the respondent police has stated that when the accused were arrested, one of the accused was trying to flew away from the scene of occurrence and when the respondent police tried to catch them, one of the accused viz., Mr.Kasimayan fell down and sustained injuries, which has not been whispered about the first information report. Therefore, the entire case has been foisted as against the petitioner and another only for statistical purpose and hence, he prayed for bail to the petitioner.

4.The learned Additional Public Prosecutor vehemently opposed the bail petition and contended that the petitioner accepted her guilty by her confession statement, which would reveal that the first accused and the petitioner are relatives and they purchased the contraband from Andhra Pradesh to sell the same in the State of Kerala. The contraband is weighed about 42 kgs and it is commercial quantity. As per the notification, possession of 1 kg Cannabis is notified as commercial quantity. Therefore Section 37 of N.D.P.S. Act clearly states that no person for the offences involved in commercial quantity shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that the accused is not likely to commit any offence while on bail. He would further contends that the investigation is still pending and the respondent is yet to get the report from Forensic Sciences Laboratory and on the basis of such report, the respondent will file final report.

5.It is seen from the records that this is a second bail application filed by the petitioner. On 28.05.2018, on secret information, when the respondent conducted vehicle checkup, on suspicion, they found the petitioners are in possession of kanja weighing 42 kgs in a white colour polythene gunny bag. When they were intercepted by the respondent, they handed over the kanja bags and after after issuance of search memo, they were also searched by the respondent. Thereafter, they were arrested at about 08.45 p.m. On 28.05.2018 and they were brought to the police station and at about, 10.00 p.m., FIR has been registered in crime No.171 of 2018 for the offence stated above.



6. Further, it is seen from the remand report, when the respondent were trying to arrest the accused, one of the accused viz., Mr. Kasimayan was trying to fly away from the scene of occurrence and he fell down and sustained injury. Whereas, it is seen from the FIR, the accused themselves handed over the gunny bags and they were brought to the police station. It is seen from the overall circumstances, there are suspicious circumstances in registering the case and recovery made from the petitioner and another. Though earlier petition was dismissed by this Court, these points were not elicited by the learned counsel appearing for the petitioner.

7. Therefore, considering the above facts and circumstances of the case and also considering the period of incarceration by the petitioner from 28.05.2018, this Court is inclined to enlarge the petitioner on bail with certain conditions. 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) with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge for NDPS Act Cases, Madurai;

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

sd/-

09/10/2018

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

TO

1. THE PRINCIPAL SESSIONS JUDGE FOR NDPS ACT CASES,
MADURAI.
2. THE OFFICER INCHARGE, WOMEN PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
CHEEKKANOORANI POLICE STATION, MADURAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to MR.R.ANAND Advocate SR.No.19155

ORDER IN

CRL OP(MD) No.17623 of 2018

Date : 09/10/2018

MS/PN/SAR-4/09.10.2018/3P.6C