



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

Thursday, the Thirteenth day of December Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.18124 of 2018

JEGAN

... PETITIONER / ACCUSED No. 1

Vs

THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.

... RESPONDENT / COMPLAINANT

For Petitioner : MR.M.SHAKUL HAMEED Advocate

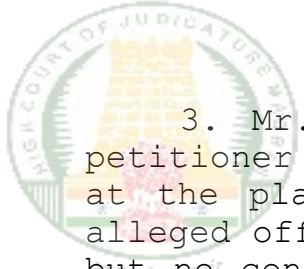
For Respondent : MR.ARUL VADIVEL @ SEKAR,
SPECIAL PUBLIC PROSECUTOR FOR CUSTOMS CASES,

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

ORDER : The Court Made the following order :-

The petitioner / A1, who was arrested by the respondent Police on 23.07.2018, for the offences punishable under Sections 8(c) r/w.20(b)(ii)(C), 23, 28 and 29 of NDPS Act, 1985, in O.R.No.4 of 2017, on the file of the respondent, seeks bail.

2. The case of the prosecution is that on 17.12.2017, on the basis of secret information that around 50 Kgs of dry Ganja of Indian Origin have been kept in the seashore of Nochiyurani, to be smuggled out of India to Srilanka. Immediately, a team of officers and rushed to the spot viz., 'Nochiyurani Sea Shore', Ramnad District, along with two independent witnesses. At about 01.00 Hrs, on 18.12.2017, the officers noticed a Boat was coming from inside the sea to 'Nochiyurani Seashore' and three persons came, carrying with two gunny bags and one parcel over their head and started moving towards the Boat. Immediately, the officers tried to catch the accused. However, they could apprehend only one accused, who tried to escape by sailing into the sea and other two persons escaped in the dark. The seized contraband was 42 Kgs.



3. Mr.M.Shakul Hameed, the learned counsel appearing for the petitioner would submit that the petitioner was not at all present at the place of occurrence and he is not way connected with the alleged offence. Further, the house of the petitioner was searched, but no contraband were seized by the Police. Further, according to the prosecution, they took two mahazar witnesses viz., Mari and Sankar and they have signed on 17.12.2017, as if the they were at the occurrence place, whereas, the date of 18.12.2017 is mentioned as the date of taking mahazar. Therefore, there is severe contradiction in recording of the statement of persons ie., witnesses at the time of mahazar. Continuing his argument, he would submit that the contraband was seized, confessional statement recorded in the night hours more fully at 12.00 p.m., with the torch light only. As per Section 42 of NDPS Act, such seizure or recording must take place between sunrise and sunset. The respondent miserably failed to follow the statutory provisions enumerated under Sections 42, 50, and 67 of the said Act.

4. Mr.Arul Vadivel @ Sekar, the learned Special Public Prosecutor for Customs Cases, for the respondent filed a detailed counter contending affidavit interalia contending that there are totally four accused in this case and the petitioner is A1 and the earlier bail applications filed by the petitioner were dismissed. He also submitted that on a specific information, received and recorded on 17.12.2017, around 50 Kgs of dry Ganja of India Origin have been kept in the seashore of Nochiyurani and the same is to be smuggled out of India to Sri Lanka. The team of officers rushed to the spot along with two independent witnesses, kept surveillance. At about 01.00 hrs., on 18.12.2017, the officers noticed one Boat is coming from inside the sea to Nochiyurani Sea Shore. On arrival of the boat, three persons came out of their hiding in the opposite side carrying two gunny bags covered with adhesive taps on their heads and started moving. Immediately, the officers ran towards them and try to catch them. However, they could apprehend only one person. The officers detained two gunny bags and one person. The detained one person viz., P.Karthick and during interrogation, he revealed about the others. The parcels were opened in the presence of two independent witnesses. 42 Kgs of Ganja found seized. Thereafter, the said Karthick had given a statement under Section 67 of NDPS Act, on 18.12.2017 and 19.12.2017 wherein, he confessed that he involved in smuggling with other accused. As the follow-up action, the remaining three accused were arrested and produced before the concerned Magistrate. In this case, one of the accused viz., Jesudoss is yet to be arrested. All the statutory compliance have been complied with. The petitioner herein has also given a statement under Section 67 of NDPS Act confessing to the crime. Therefore, he strongly opposes for grant of bail to the petitioner.

5. As per the allegations in the case-diary, the seized quantity of ganja is 42 Kgs, which comes under the category of commercial quantity, as defined under the Notification of the NDPS Act. Further, there is no change of circumstances has been found to



grant bail to the petitioner. Hence, the application is hereby dismissed.

sd/-
13/12/2018

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

TO

- 1 THE SUPERINTENDENT OF CUSTOMS
RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.
- 2 THE OFFICER IN-CHARGE
DISTRICT PRISON, RAMANATHAPURAM
- 3 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. CC to MR.M.SHAKUL HAMEED Advocate SR.No. 23207
+1. CC to MR. MR.ARUL VADIVEL @ SEKAR, Advocate SR.No. 23268

ORDER
IN
CRL OP(MD) No.18124 of 2018
Date :13/12/2018

MSI/JC/SAR-III/20.12.2018-3P/6C