



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

(Criminal Jurisdiction)

Date on which reserved : 10/06/2019

Date on which pronounced:18/06/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.6829 of 2019

Naveen Kumar

... Petitioner/2nd Accused

Vs

The State rep.by,
The Inspector of Police,
NIB CID., Theni.
Cr.No.15 of 2019.

... Respondent/Complainant

For Petitioner : M/s.S.Poornachandran,
Advocate

For Respondent : V.Neelakandan,
Additional Public Prosecutor,

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

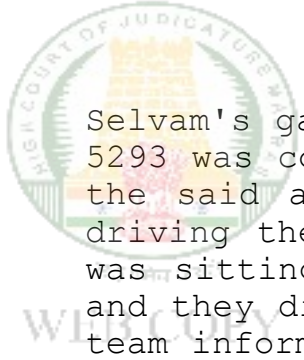
PRAYER :-

For bail petition in cr.no.15 of 2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

The petitioner/accused No.2, who was arrested and remanded to judicial custody on 21.02.2019, for the offences punishable under Sections 8(c) r/w 20(b) (ii) (c) and 25 of NDPS Act in Cr.No.15 of 2019 on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that on 20.02.2019 at about 18.00 hours, on receiving a secret information, the police party, led by Mr.Subramanian, Special Sub Inspector of Police, was on vehicle check on Kuchanur - Uppukkottai road near Kulaiyanur



Selvam's garden and at that time, an auto bearing Regn.No.TN-67-AZ-5293 was coming from Kambam towards Bodi. The Police party stopped the said auto and found that the accused No.3 viz., Karthick was driving the said auto and the petitioner herein Naveen Kumar (A-2) was sitting on the rear seat. The Police team enquired with them and they disclosed their names and address. Thereafter, the Police team informed to them that they want to search the said auto and if the said accused persons requires that the search can be conducted in the presence of a gazetted Officer or a Magistrate. But the said accused persons replied that the Police themselves can make search and thereafter, the Police team searched the said auto and found on the rear side seat a white gunny bag containing 21 kgs of ganja. The said ganja was seized under a mahazar and thereafter, sample has been taken and the accused Nos.2 and 3 were arrested and they voluntarily gave confession statement and the same was recorded. Based on the said confession, the accused No.1 was implicated. Thereafter, the accused Nos.2 and 3, the contraband and the said auto were brought to the police station and registered a case in Cr.No.15/2019 under Sections 8(c) r/w 20(b) (ii) (c) and 25 of NDPS Act and remanded to judicial custody.

3.Learned counsel for the petitioner has submitted that on 20.02.2019 at about 12.20 p.m, when the petitioner was standing nearby a tea-shop at Theni, the respondent Police came there and forcibly taken the petitioner to the Police Station and the said fact has been recorded in the CCTV camera and therefore, the petitioner would not have been found in possession of ganja at 18.00 hours. He further submitted that in the arrest card itself, the crime number has been mentioned and the same also would show that the petitioner was not arrested at the time as mentioned in the F.I.R. He further submitted that the contraband was not seized in the presence of independent witnesses and the same is fatal to the prosecution case. He further submitted that the seized ganja contains stems also and if the said stems are excluded, the weight of ganja might have been below 21 kgs and therefore, the said quantity would not come under the category of commercial quantity. He further submitted that the provisions of Section 50 of NDPS Act has not been followed. He further submitted that the petitioner is in judicial custody for the past 113 days and therefore, he prayed to grant bail to the petitioner.

4.Learned counsel for the petitioner, in support of the aforesaid contentions, relied upon the following decisions:

i) **Kaliswari Vs The Commissioner of Police, Madurai City [H.C.P. (MD).No.866 of 2008]**, on the file of the Madurai Bench, dated 24.04.2009.

ii) **Siva Kumar and another Vs The Inspector of Police, NIBCID, Nagappattinam, Thanjavur District**, reported in 2011 (1) MWN (Cr.) 591.

<https://hcservices.ecourts.gov.in/hcservices/>



iii) **K.V.Ramasamy Vs. The Superintendent of Police, Preventive Unit/Salem (Crl.Appeal No.685 of 2004)** on the file of the Madras High Court, dated 09.09.2009.

5.The learned Additional Public Prosecutor, on the contrary, has submitted that the seizure made in the presence of independent witnesses is not fatal to the prosecution. He further submitted that the arrest card was prepared only after registering the case and hence, it contains crime number and therefore, the same fact cannot be said as fatal to the prosecution case. He further submitted that already, two similar type of cases are pending against the petitioner. He further submitted that the earlier bail application, which was filed in Crl.O.P.No.3776 of 2018 was dismissed by this Court on 12.03.2019. Thereafter, there was no change of circumstances for entertaining the second bail application and therefore, he prayed to dismiss this petition.

6.The learned Additional Public Prosecutor, in support of the aforesaid contentions, relied upon the following decisions:

i) **State of Madhya Pradesh Vs. Kajad** reported in **AIR 2001 SC 3317**

ii) **State of Haryana Vs. Ranbir Alias Rana**, reported in **(2006) 5 SCC 167**

iii) **Babua alias Tazmul Hossain Vs State of Orissa**, reported in **2001 Supreme Court Cases (Cri) 351**

iv) **State of Himachal Pradesh Vs Pardeep Kumar and Others** reported in **[(2018) 13 SCC 808]**.

7.In **Kaliswari Vs The Commissioner of Police, Madurai City [cited supra]**, according to the Investigating Agency, when the detenu was found in possession of 1.5 kgs of ganja at about 13.00 hours, the arrest card was prepared, but the case was registered in the Police Station only at 15.15 hours. A Division Bench of this Court considering the aforesaid facts, has observed that naturally, the crime number would not have found place in the arrest card. But the arrest card contain the crime number, which would cause a doubt, if the arrest card has come into existence as put forth by the Investigating Agency and finally, the Division Bench, has allowed the Habeas Corpus Petition and set aside the detention order.

8.In **Siva Kumar and another Vs The Inspector of Police, NIBCID, Nagappattinam, Thanjavur District, (cited supra)**, the accused was convicted by the trial court. This Court, while disposing of the said appeal, has taken into consideration the fact that the arrest card contains the crime number and provisions of law, as one of the grounds for allowing the appeal filed by the accused. Further, it has held that the said ground is one of the



grounds to suspect the genuineness of the prosecution case.

9. In **K.V.Ramasamy Vs. The Superintendent of Police, Preventive Unit/Salem** (cited supra), this Court while disposing of the appeal filed by the accused against the judgment of conviction, has observed that the separated stem from cannabis plant and not attached with flowering top may be excluded, while absorbing the total weight of ganja. Whether stems are excluded or not is a matter for appreciation of evidence at trial.

10. Whereas, while considering the bail application with regard to possession of commercial quantity of ganja, the Court has to see whether the conditions stated under Section 37(1)(b)(ii) of the NDPS Act are satisfied. In this context, it would be relevant to refer the decision in **State of Madhya Pradesh Vs. Kajad** (cited supra), wherein, the Honourable Supreme Court has observed as follows:

"The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the Court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub-clause (ii) of clause (b) of Section 37(i). For granting the bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further, he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for."

11. From the aforesaid decision, it is clear that for granting the bail, the Court must, on the basis of the records, produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further, he is not likely to commit any offence, while on bail. So, both the conditions should be satisfied

12. In **Babua alias Tazmul Hossain Vs State of Orissa**, (cited supra) the Honourable Supreme Court, has observed in paragraph No.3



as follows:

In view of Section 37(1)(b) of the Act unless there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail alone will entitle him to a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the Court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view."

13. From the aforesaid decision also, it is clear that unless there are reasonable grounds for believing that the accused is not guilty of such an offence and he is not likely to commit an offence, while on bail alone entitled him to release on bail. It is also clear that at the stage of considering the bail application, all that can be seen is whether the statement made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not.

14. This Court does not find any major infirmities in the statement of the prosecution witnesses, which would not result in conviction of the petitioner. Further, at the stage of considering the bail application, it would not be proper to discuss about the minute details of the evidence. Further, already, the petitioner is having two cases out of which, one is under the NDPS Act and under the said circumstances, this Court is of the view that if the petitioner is released on bail, he may commit the same type of offence.



15. In the State of **Haryana Vs. Ranbir alias Rana reported in (2006) 5 Supreme Court Cases 167**, the Honourable Supreme Court, by following the earlier decision of the Constitution Bench in **State of Punjab Vs Baldev Singh, (1999) 6 SCC 172**, has held that Section 50 of the NDPS Act would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag, article or container, etc., which the accused at the relevant time was carrying. Therefore, even assuming that there are some irregularities, while making search, in this case, search was not made on person, but the search was made in the gunny bag, which was carried by the petitioner in an auto. Therefore, Section 50 of the Act will not attract.

16. With regard to mentioning of the crime number in the arrest card, etc. are matters for appreciation of evidence on trial. Further, the petitioner has not shown any change of circumstances, after disposal of the earlier bail application.

17. Taking into consideration of all the aforesaid facts, this Court is of the view that the petitioner has not made out a case for getting bail. Hence, this Criminal Original Petition is dismissed.

sd/-
18/06/2019

/ TRUE COPY /

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

TO

1. THE INSPECTOR OF POLICE
NIB CID., THENI
2. THE SUPERINTENDENT
CENTRAL PRISON, MADURAI
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No. 6829 of 2019
Date : 18/06/2019

vs

PK/JC/SAR-4/21.06.2019 : 6P/4C

<https://hcservices.ecourts.gov.in/hcservices/>