



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

(Criminal Jurisdiction)

Date on which reserved : 11/06/2019

Date on which pronounced : 18/06/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.6832 of 2019

Naveen

... Petitioner/Accused No.2

Vs

State rep.by,
The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.
Crime No.88 of 2018.

... Respondent/Complainant

For Petitioner : M/s.P.Senguttuarasan, Advocate

For Respondent : V.Neelakandan,
Additional Public Prosecutor,

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

PRAYER :-

For bail in cr.no.88 of 2018 on the file of the respondent police.

ORDER : The Court Made the following order :-

This petition has been filed by the Accused-2 seeking bail for the alleged offences punishable under Sections 8(C) r/w 20(b), (ii) (C) of NDPS Act in Cr.No.88 of 2018.

2.The case of the prosecution is that on 16.04.2018 at about 20.00 hours, a police party led by Mr.Shanmugapandian, Ramarani, who were on surveillance, on secret information, went to the house of one Vangaru @ Shiva (A-1) at Keeripatti Village and found that on the back side of A-1's house, 8 white gunny bags. On suspicion, the police team informed the said Vangaru @ Shiva that they wanted to search the said gunny bags and if he requires that search can be done in the presence of a gazetted Officer or the Judicial Magistrate concerned and for that, A-1 replied that he has no objection to conduct search by the Police party itself.

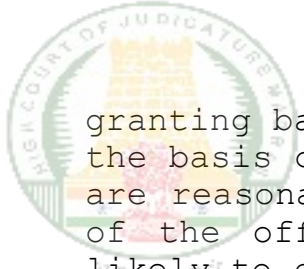


Accordingly, the aforesaid gunny bags were opened and found that the said gunny bags contained ganja. Thereafter, the police party arrested the said Vangaru @ Shiva and enquired with him. He gave voluntarily a confession statement. The said confession statement has been recorded in the presence of Mr.Selvakumar, Grade-I, Police Constable and Mr.Radhakrishnan, another Police Constable. In the said confession statement, the said Vangaru @ Shiva has stated that he along with one Naveen, S/o.Murugan (petitioner herein) purchased 150 kgs of ganja from Andhra Pradesh and kept behind his house. Thereafter, the Police team seized 7 white gunny bags, containing 20 kgs of ganja and one gunny bag containing 10 kgs of ganja and totally 150 kgs of ganja was seized. Thereafter, the Police team took 50 gms of sample from each gunny bag and thereafter, brought the accused No.1 along with contraband to the Usilampatti Taluk Police Station and registered an F.I.R in Cr.No.88 of 2018 under Sections 8(C) r/w 20(b), (ii) (C) of NDPS Act. Thereafter, the accused No.1 and contrabands were sent to the Judicial Magistrate No.1, Usilampatti for remand. Based on the confession given by the accused No.1 viz., 8(C) r/w 20(b), (ii) (C) of NDPS Act, accused No.2 viz., Naveen (petitioner herein) was arrested and on 10.07.2018, remanded to judicial custody.

3.The learned counsel for the petitioner has submitted that the petitioner is an innocent and he has been falsely implicated in the above case. He further submitted that the contraband was not seized from the petitioner and as per the prosecution case, it was seized only from the accused No.1. He further submitted that already, the trial court has granted bail to accused No.1 on 27.11.2018 itself. He further submitted that the petitioner herein is in custody from 10.07.2018, i.e for the past 11 months. He further submitted that already, charge-sheet also has been filed and the case was taken on file in C.C.No.361 of 2019 and therefore, the petitioner need not be kept in custody. He further submitted that if the petitioner is released on bail, he will co-operate for trial and therefore, he prayed to grant bail to the petitioner.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that the accused No.1 was released on bail under Section 167(2) Cr.P.C, as charge-sheet was not filed within 180 days, as stipulated under the NDPS act and the petitioner cannot claim any benefit from the said order, because now, charge sheet has been filed and case also has been taken on file. He further submitted that the petitioner is having one more previous case in Cr.No.1 of 2016 on the file of the Town Police Station, Usilampatti under Sections 8(c) r/w 20(b) (ii) (B) & 25 of NDPS Act. Hence, he strongly opposed this petition.

5.At this juncture, it would be relevant to refer the following decisions:



granting bail in the case of commercial quantity, 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.

ii) In **Union of India Vs Rattan Mallick @ Habul, reported in [2009 CRI.L.J.3042]** (Supreme Court), wherein, the Honourable Supreme Court, in paragraph No.14, has held as follows:

"14.We, may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

6.From the aforesaid decisions, it is clear that while considering the application for bail, with reference to Section 37 of the NDPS Act, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding whether or not the accused has committed an offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with. Further, he is not likely to commit an offence, while on bail. It is also clear that satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

7.In this case, though the contrabands were not seized from the petitioner, he was arrayed as accused No.2, based on the confession given by accused No.1. Further, admittedly, he is already having one case in Cr.No.1 of 2016 on the file of the Town Police Station, Usilampatti under Sections 8(c) r/w 20(b) (ii) (B) & 25 of NDPS Act, which is also similar in nature. Under the said circumstances, this Court is of the view that if the petitioner is released on bail, he may commit the same kind of offences.

8.Admittedly, already, the charge-sheet was filed and the same was also taken on file and hence, this Court feels that a direction can be given to the trial court to expedite the trial and dispose of the same at early.



9. For the aforesaid reasons, this Criminal Original Petition is dismissed. The trial Court is directed to expedite the trial in C.C.No.361 of 2019 and dispose of the same within a period of 3 months from the date of receipt of a copy of this order.

WEB COPY

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
USILAMPATTI TALUK POLICE STATION,
MADURAI DISTRICT.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.P.SENGUTTUARASAN Advocate SR.No.10034

ORDER
IN
CRL OP(MD) No.6832 of 2019
Date :18/06/2019

vs
PK/PN/SAR-4/20.06.2019 : 4P/5C