

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date on which reserved : 12/07/2019

Date on which pronounced : 22/07/2019

PRESENT

**The Hon`ble Mr.Justice P.RAJAMANICKAM**

**CRL OP(MD) . No.8833 of 2019**

A.D.ARUN

... PETITIONER/ACCUSED No.1

Vs

THE INTELLIGENCE OFFICER,  
NARCOTICS CONTROL BUREAU,  
MADURAI SUB ZONE,  
MADURAI.

IN CR.NO.NCB.F.NO.48/1/07/2018-NCB/MDU

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.T.LAJAPTHI ROY, Advocate

For Respondent : MR.ARUL VADIVEL @ SEKAR,  
Special Public prosecutor

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

PRAYER :-

For Bail in CR.NO.NCB.F.NO.48/1/07/2018-NCB/MDU on the file of the respondent police.

ORDER : The Court Made the following order :-

1. This petition has been filed by the Accused-6 seeking bail for the alleged offences punishable under Sections 8(C) r/w Section 20(b)(ii)(C), 25, 27(A), 28 and 29 of the NDPS Act, 1985 in Cr.No.Ncb.F.No.48/1/07/2018-NCB/MDU.

2.i)The case of the prosecution is that on 11.06.21018, NCB team (respondent) received a secret information. Based on the same, the respondent was on surveillance around Lakshmipuram Tollgate at about 22.30 hours, a white colour Tata Safari bearing Regn.No.TN-72A-9000 came from the direction of Batlagundu towards Dindigul and stopped near the Tollgate. The NCB team surrounded the said car, which was found occupied by three persons. The NCB team disclosed their identity to them and enquired about their respective identities. The driver revealed his identity as Sriram (A-3),

S/o.C.Mariappan, Batlagundu and the other two persons respectively disclosed their names as S.Ravi (A-2), S/o.Sivasamy, Nilakottai and A.D.Arun (A-1), S/o.P.Ayyadurai, Batlagundu. Thereafter, the NCB team introduced the witnesses to the accused persons and also briefed them about the secret information received by NCB and enquired as to whether they were carrying any narcotic drug/Ganja concealed in the vehicle. They all replied in affirmative stating that they are carrying a consignment of ganja, packed in 114 parcels loaded in the trunk as well as on the rear seat of the vehicle. A-2 further informed the NCB team that they had brought the consignment of ganja on the instruction of A-1, who was also present with them.

ii)Then, the NCB team offered their personal search to all the three accused, which they politely declined. Then, the NCB Officer asked them to open the trunk and rear door of the vehicle, which was found full of rectangular white plastic packets with rose flower imprint on it totally accounting to 114 nos. of packets. One by one all the 114 packets were cut opened which were found containing similar brown colour dried leafy substance in all packets which were double packed in two white plastic covers with rose flower imprint on all the parcels. A small pinch of the recovered brown coloured leafy substance was taken out from each of the packets and tested one by one with the help of multiple field testing kit which answered positive for ganja for each of the packets. Thereafter, the NCB Officer seized the entire lot of 114 packets of dried leafy substance on the reasonable belief that it is ganja. Thereafter, samples have been taken, also seized the aforesaid Tata Safari car and bank passbooks, cheque books and other vehicular records and cell phones and currency notes from each of the accused persons. After completion of the seizure proceedings, the Officers again offered their individual personal search before the independent witnesses, to which the accused persons politely declined. On completion of the search and seizure proceedings, the accused were individually served with summons under Section 67 of the NDPS Act for further enquiry. As they were not aware of the NCB Office location, they voluntarily accompanied the NCB Officers to NCB Office on their request.

iii)On reaching the NCB Office, Madurai, the NCB team taken all the seized contraband along with accused persons. The accused persons voluntarily gave statements and the same were recorded, in which they have voluntarily admitted their guilt of procurement, possession, transport, financing and attempting to illegal sale. Thus, they entered into criminal conspiracy of illicit trafficking of 251.50 kgs of ganja. Hence, the case was registered and the accused were arrested on 12.06.2018 at 17.00 hours.

iv)Since the accused No.1 has stated in his statement that he is working as Assistant to Public Relation Officer in Dindigul Collectorate, the District Collector, Dindigul was also intimated about the arrest of A-1. Thereafter, as per the directions of the Trial court, the samples were sent to the Joint Director, Customs

House Laboratory, Chennai for chemical analysis. The Customs House Laboratory, Chennai has sent a report stating that the samples were ganja and hence, a complaint has been lodged under Section 8(c) r/w Section 20(b)(ii), (c), 25, 27(A), 28 and 29 of the NDPS Act, 1985. Based on the same, a case was taken on file in C.C.No.20/2019 and the same is pending.

3.The learned counsel for the petitioner has submitted that the petitioner, who is working as Assistant to the Public Relation Officer in Tamil Nadu Government and he is not having any bad antecedent, but he has been falsely implicated in the above case. He further submitted that the respondent has violated the mandatory provisions of Sections 42, 50 and 57 of the NDPS Act. He further submitted that as per the said Act, the respondent ought to have obtained separate consent from each of the accused for conducting search, but, in this case, the respondent has obtained a common consent and the same is against the provisions of the the NDPS Act. He further submitted that in **Tofan Singh Vs State of Tamil Nadu (2013) 16 SCC 31**, the Honourable Supreme Court has referred the matter to a larger Bench for reconsideration of the issue as to whether the officer investigating the matter under the NDPS Act would classify as Police Officer or not and whether the statement recorded by the Investigating Officer under Section 67 of the NDPS Act can be treated as confession statement or not, even if the Officer is not treated as Police Officer. He further submitted that the aforesaid decision has been referred to by the Honourable Supreme Court in the latest decision in **Surinder Kumar Khanna Vs Intelligence Officer, Directorate of Revenue Intelligence (2018) 8 Supreme Court Cases 271** and observed that a confession of co-accused is obviously an evidence of very weak type and the said confession by itself cannot be taken as substantive piece of evidence against the another accused and can best be evidenced only to lend assurance to the Court.

4.The learned counsel for the petitioner has further submitted that in this case, except the statement said to have been recorded from the petitioner, under Section 67 of the NDPS Act, no other material is available to link the petitioner with the aforesaid crime. He further submitted that as per the complaint, on 11.06.2018, at about 22.30 hours, the NCB team has intercepted a Tata Safari car bearing Regn.No.TN-72-AJ-9000 in the Lakshmipuram Tollgate in the Batlagundu-Kodaikanal road and found 3 accused persons in the said car and ganja was also in their possession. But, they were not arrested immediately and only on 12.06.2018, they were arrested and the aforesaid fact itself would raise a doubt with regard to the alleged interception of the accused in the said time and place. He further submitted that as per Chapter 12 of the Field Officers' Handbook, issued by the Narcotics Control Bureau, through the Government of India, the DLEO should arrest a person after establishing, prima facie, on the basis of recovery and seizures, statement made by him and other persons and other evidence documentary or otherwise available that he has committed an offence

punishable under the NDPS Act. In the present case, the aforesaid guidelines have not been followed by the respondent. He further submitted that the petitioner is in custody from 12.06.2018 i.e for more than 13 months and therefore, he prayed to grant bail the petitioner.

5.Per contra, the learned Special Public Prosecutor has submitted that on 11.06.2018 at about 17.30 hours, the respondent has received a secret information and the same was recorded under Section 42 of the NDPS Act and submitted to the Superintendent, NCB, Madurai, who endorsed the information report on the same day at 18.00 hours. He further submitted that based on the said information, the NCB team was on surveillance near Lakshmipuram Tollgate, adjacent to hotel Anjaneya in Batlagundu-Dindigul road and at about 22.30 hours, a white Tata Safari car bearing Regn.No.TN-72-AJ-9000 came from the side of Batlagundu and NCB team gave signal to stop the said vehicle and accordingly, the said vehicle was stopped. He further submitted that in the said vehicle, 3 accused persons were present. The NCB team disclosed their identity with them and enquired about their respective identity. Accordingly, the driver disclosed his name as M.Sriram (A-3) and other two accused persons disclosed their names as A.D.Arun (A-1) and S.Ravi (A-2). He further submitted that the NCB informed to the accused persons about the secret information received by them as ganja has been transported in the said vehicle and all the persons have replied in affirmative and stated that they were carrying a consignment of ganja, packed in 114 parcels loaded in the trunk as well as on the rear seat of the vehicle. He further submitted that the said ganja is totally weighing 251.50 kgs and the same was seized and sample was also taken. Thereafter, summons has been issued to the accused persons, directing them to appear before the Office of NCB and accordingly, they appeared in the said Office and statements under Section 67 of the NDPS Act have been recorded from the accused persons and they have been arrested.

6.The learned Special Public Prosecutor has further submitted that though the NCB team informed its intention to have a personal search, the accused persons have politely denied the same and hence, no personal search has been made. He further submitted that since the accused persons themselves have voluntarily admitted that they have transported 251.50 kgs of ganja, the question of violation of procedures does not arise. He further submitted that the samples were sent to laboratory and the report was received from the said laboratory, confirming that the contraband which was seized from the accused persons is 'ganja'. He further submitted that in Tofan Singh Vs State of Tamil Nadu (cited supra), the Honourable Supreme Court has referred the matter to a larger Bench, but sofar, no decision came from the larger Bench and hence, there is no bar to rely upon the statements recorded under Section 67 of the NDPS Act.

7.The learned Special Public Prosecutor has further submitted that the prosecution not only relied upon the confession statements

of the co-accused, but also the confession statement given by the petitioner himself. He further submitted that the petitioner was found in possession of the huge quantity of ganja, hence, it has to be presumed that he has committed the offence under the NDPS Act. He further submitted that the quantity of the ganja seized from the accused persons comes under the category of 'Commercial Quantity'. The petitioner has not made out a case for getting bail, as envisaged under Section 37 of the NDPS Act. He further submitted that the petitioner has admitted in his statement that for the purpose of ganja trafficking, he had purchased the aforesaid car bearing Regn.NO.TN-72AJ-9000, just 3 to 4 weeks ago from a used car dealer and the said fact also shows that the petitioner had committed the offence. Therefore, he prayed to dismiss the petition.

8.The learned counsel for the petitioner by way of reply, has submitted that the petitioner is not the owner of the TATA Safari car bearing Regn.NO.TN-72AJ-9000. He further submitted that the RC Book for the said car stands in the name of one 'K.Shankar' and the same was sold by the said Shankar to one G.Babu Seetharaman on 04.05.2018. In support of the aforesaid contention, he has produced a xerox copy of RC Book and sale agreement.

9.In the complaint, it is stated that on 11.06.2018 at about 17.30 hours, the NCB team had received a secret information as the accused persons are about to deliver a substantial quantity of ganja near Lakshmipuram Tollgate, near hotel Anjaneya in Batlagundu-Kodaikanal road. Based on the said information, the NCB was on surveillance in the said Tollgate. At 22.30 hours, a white colour Tata Safari car bearing Regn.NO.TN-72AJ-9000 came from the side of Batlagundu and the NCB team stopped the said car and found 3 persons were in the said car. It is also stated that the NCB team disclosed their identity to the said persons and enquired their respective identities and accordingly, the driver revealed his identity as M.Sriram (A-3) and other two accused persons disclosed their identities as A.D.Arun (A-1) and S.Ravi (A-2). It is further stated that the NCB team, introduced witnesses to the accused persons and also briefed them about secret information received by them and enquired as to whether they are carrying ganja in the said vehicle and for that, all the three accused persons replied in affirmative and that they were carrying ganja in lot in the 114 parcels as well as on the rear seat of the vehicle and thereafter 114 packages of ganja was seized and weighed and found that its weight is 251.50 kgs. It is also stated that samples have been taken from the said ganja and sent to the laboratory for test. It is also stated that summons were served on the accused persons and in pursuance of the said summons; the accused persons appeared before the Intelligence Officer, NCB Officer on 12.06.2018 and out of their own volition; they gave confession statements and the said statements were recorded under Section 67 of the NDPS Act and in the said statement, the petitioner herein admitted the entire offence

and also stated that only for the purpose of trafficking the ganja, he had purchased the aforesaid Tata Safari Car 3-4 weeks ago from an used car dealer.

10. It is also stated in the complaint that on 11.06.2018, at about 17.30 hours, the respondent had received the information about the transporting of ganja and the same was informed to the Superintendent, NCB. It appears that the respondent has followed the procedures laid down under Section 42 of the NDPS Act.

11. In the complaint, it is clearly stated that the NCB Officers offered their individual personal search before the independent witnesses to the accused persons, to which they politely declined and hence, no damage, loss or inconvenience was caused to anybody or property during the entire seizure procedure. Therefore, the contention of the petitioner that the respondent has not followed the procedures for conducting personal search does not have any merit.

12. Though the petitioner has produced a xerox copy of RC, which stands in the name of one K.Shankar and also sale agreement said to have entered into between the said K.Shankar and one G.Babu Seetharaman, the RC has not been transferred to the name of the said G.Babu Seetharaman. Therefore, the said sale agreement could have been created at any time and no reliance can be placed on the said sale agreement.

13. As pointed out already, in the statement recorded under Section 67 of the NDPS Act, the petitioner has categorically admitted that he purchased the said vehicle from the used owner and therefore, the contention of the petitioner that he is not the owner of the said vehicle cannot be accepted.

14. In **Tofan Singh V. State of Tamil Nadu (cited supra)**, the Honourable Supreme Court, in paragraph No.38 to 40, has held as follows:

"38. In our view the aforesaid discussion necessitates a re-look into the ratio of Kanhiyalal Case. It is more so when this Court has already doubted the dicta in Kanhaiyalal (supra) in the case of **Nirmal Singh Pehalwan (2011) 12 SCC 298** wherein after noticing both **Kanhiyalal as well as Noor Aga**, this Court observed thus:

"15. We also see that the Division Bench in Kanhaiyalal case; 2008 (4) SCC 668; (2008) 2 SCC (Crl.) 474, had not examined the principles and the concepts underlying Section 25 of the Evidence Act vis.-a-vis. Section 108 of the Customs Act the powers of Custom Officer who could investigate and bring for trial an accused in a narcotic matter. The said case relied exclusively on the judgment in Raj Kumar's case (Supra). The latest judgment in point

of time is Noor Aga's case which has dealt very elaborately with this matter. We thus feel it would be proper for us to follow the ratio of the judgment in Noor Aga's case particularly as the provisions of Section 50 of the Act which are mandatory have also not been complied with."

39. For the aforesaid reasons, we are of the view that the matter needs to be referred to a larger Bench for re-consideration of the issue as to whether the officer investigating the matter under NDPS Act would qualify as police officer or not.

40. In this context, the other related issue viz. whether the statement recorded by the investigating officer under Section 67 of the Act can be treated as confessional statement or not, even if the officer is not treated as police officer also needs to be referred to the larger Bench, inasmuch as it is intermixed with a facet of the 1st issue as to whether such a statement is to be treated as statement under Section 161 of the Code or it partakes the character of statement under Section 164 of the Code."

15. In *Surinder Kumar Khanna Vs Intelligence Officer, Directorate of Revenue Intelligence* (cited supra), the Honourable Supreme Court, has observed in paragraph Nos. 8 and 9 as follows:

"8. Thus the issue whether statement recorded under Section 67 of the NDPS Act can be construed as a confessional statement even if the officer who recorded such statement was not to be treated as a police officer, has now been referred to a larger Bench.

9. Even if we are to proceed on the premise that such statement under Section 67 of the NDPS Act may amount to confession, in our view, certain additional features must be established before such a confessional statement could be relied upon against a co-accused. It is noteworthy that unlike Section 15 of Terrorist and Disruptive Activities Act, 1987 which specifically makes confession of a co-accused admissible against other accused in certain eventualities; there is no such similar or identical provision in the NDPS Act making such confession admissible against a co-accused. Similarly: Section 18 of Maharashtra Control of Organised Crime Act, 1999 accused. The matter therefore has to be seen in the light of the law laid down by this Court as regards general application of a confession of a co-accused as against other accused."

16. In this case, the respondent not only relied upon the confession statement given by the co-accused, but also relied upon the confession statement given by the petitioner himself. Further, the petitioner was found in possession of ganja along with other accused persons. The petitioner has not given any plausible explanation as to why the petitioner has been falsely implicated in the above case. Further, so far, no decision came out from the larger Bench. Under the said circumstances, this Court is of the view that there is no bar to rely upon the earlier decision in **Kanhaiyalal Vs Union of India (2008) 4 SCC 668**, wherein, the Honourable Supreme Court has held that considering the provisions of Section 67 of the NDPS Act, the Officer vested with the Officer Incharge of the Police Station under Section 53 of the NDPS Act is not a police Officer within the meaning of Section 25 of the Indian Evidence Act and as such, the statement recorded under Section 67 of the NDPS Act is not hit by the provisions of the Section 25 of the Indian Evidence Act. Therefore, the petitioner cannot take a plea that the statement recorded under Section 67 of the NDPS Act is not admissible in view of bar under Section 25 of the Indian Evidence Act.

17. In this case, huge quantity of ganja i.e 251.50 kgs of ganja was seized from the petitioner and other accused persons. In view of Section 37(i)(b) of the NDPS 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, will entitle him to release him on 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(i)(b) of the NDPS Act. In **Babua Alias Tazmul Hossain Vs State of Orissa, 2001 Supreme Court Cases (Cri) 351**, the Honourable Supreme Court, in paragraph No.3, has held as follows:

"3. 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. Further, at this juncture, we cannot say that the accused is not guilty of the aforesaid offence, if the allegations made in the charge are established. Nor we can 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."

18. In this case, the evidence relied upon by the prosecution cannot be ignored at this stage. Therefore, this Court is of the view that the petitioner has not made out a case for getting bail.

19. In the result, this petition is dismissed. Considering the fact that the petitioner is in custody for more than 13 months, the trial court is directed to expedite the trial and dispose the case as early as possible.

sd/-  
22/07/2019

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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, MADURAI.

+1. CC to M/S.T.LAJAPTHI ROY, Advocate SR.No.12112

+1. CC to M/S.MR.ARUL VADIVEL @ SEKAR, Advocate SR.No.12066

ORDER  
IN

CRL OP(MD) No.8833 of 2019  
Date : 22/07/2019

vs

PK/JC/SAR-2/02.08.2019 : 9P/5C