



WEB COPY

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

Date on which reserved : 17/07/2019

Date on which pronounced : 23/07/2019

PRESENT

The Hon'ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.9583 of 2019

Natheesh

... Petitioner/Accused No.6

Vs

State,
rep.by Inspector of Police,
Sellur Police Station,
Madurai City
(Crime No.1078/2018) .

... Respondent/Complainant

For Petitioner : M/s.D.Rameshkumar, Advocate

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in crime No.1078/2018 on the file of the Respondent police.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 8(C) r/w 20(b)(ii)(C) of NDPS Act in Crime No.1078 of 2018, seeks anticipatory bail.

2.The case of the prosecution is that on 19.07.2018, at about 10.15 a.m, when the respondent Police was on patrolling, they have noticed that a few persons were standing near a white colour Indica car bearing Regn.No.TN-57-J-5779 near NSK Thidal, Meenakshipuram at Madurai on suspicious circumstances. On seeing the Police party, one person fled away from the scene of occurrence through the said car, remaining 5 persons were surrounded by the

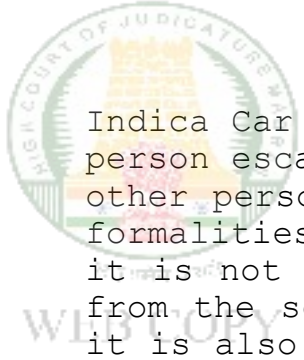


Police party. The Police party informed them that they are Police and they had information, as the aforesaid persons illegally trafficking ganja and hence, they want to search them. They also informed them that if they require, search can be made in the presence of a Judicial Magistrate or a Gazetted Officer and for that, the aforesaid 5 persons replied that the Police team itself can search them. Accordingly, at about 10.30 a.m, the Police team made a search with the two bags, which were in possession of one Podhumani (A-1) and found in each bag 10.500 kgs, totally 21 kgs of ganja. The said ganja was seized in a mahazar. Thereafter, A-1 voluntarily gave a confession statement. She has stated that the person, who escaped through the aforesaid car is her daughter-in-law namely Natheesh (petitioner herein). Thereafter, all the 5 persons were arrested and brought to the Police Station and an F.I.R was registered and the accused persons and the contrabands were sent to the concerned Court for remand.

3.The learned counsel for the petitioner has submitted that in the F.I.R, it is simply stated that one person escaped from the scene of occurrence through the said car, but it is not specifically stated as to whether the said person is a male or female. Further, he submitted that in the F.I.R, it is also not specifically stated that the said person himself/herself was driving the said car or some other person was driving the said car. He further submitted that according to the prosecution, only based on the confession said to have been given by A-1, the petitioner has been arrayed as accused No.6. He further submitted that even in the said confession statement, not specifically stated that whether the petitioner herein herself has driven the said car or some other person has driven the said car. He further submitted that since the petitioner happens to be the daughter-in-law of A-1 and wife of A-5, she has been falsely implicated in the above case and she has not committed any offence. He further submitted that the petitioner is not having any bad antecedent and therefore, he prayed to grant anticipatory bail to the petitioner.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that in the F.I.R, it is clearly stated that on seeing the Police party, one person has escaped from the scene of occurrence through the white colour Indica car bearing Regn.No.TN-57J-5779 and subsequently, A-1 has stated in the confession statement confirming the presence of the petitioner herein in the scene of occurrence and only on seeing the Police, she escaped through the said car. He further submitted that the car is yet to be seized and hence, the custodial interrogation of the petitioner is absolutely necessary and therefore, he strongly opposed this petition. However, he fairly conceded that no previous case is pending against the petitioner.

5.In the FIR, it is stated that when the Police party was on surveillance on 19.07.2018 at about 10.15 a.m near NSK Thidal, Meenakshipuram, Madurai, a few persons were standing near a white



Indica Car bearing Regn.No.TN-57J-5779 and on seeing the Police, one person escaped from the scene of occurrence through the said car and other persons were surrounded by the Police and after following the formalities, ganja weighing about 21 kgs was seized from A-1. But it is not specifically stated that whether the person, who escaped from the scene of occurrence is a male or female person. Further, it is also not stated that whether the person, who escaped from the scene of occurrence himself/herself was driving the said car or some other person was driving the said car.

6. According to the prosecution, after A-1 to A-5 were arrested, A-1 gave voluntarily a confession statement stating that the person, who escaped from the scene of occurrence was her daughter-in-law (petitioner herein). Further, she has stated that since her son (A-5) was not doing well, one person from Theni was hired for driving the said car. But the Police has not enquired about the said driver. Further, as already pointed out that in the F.I.R, it is not specifically stated whether the petitioner herself was driving the said car or some other person was driving the said car. Except the aforesaid confession statement of A-1, no other material has been produced by the prosecution to link the petitioner with the aforesaid crime. Since the respondent is the Police, confession given before the Police is hit by Section 25 of the Indian Evidence Act, 1872. Further, no bad antecedent is reported against the petitioner.

7. Taking into consideration of the aforesaid facts, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that she is not likely to commit any offence, while on bail, as envisaged under Section 37(i)(b)(ii) of the NDPS Act. Hence, this Court is inclined to grant anticipatory bail to the petitioner by imposing certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Additional District Judge of Principal Special Court for EC & NDPS Act Cases, Madurai on condition that 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Judge concerned and on further condition that:

[a] if the petitioner fails to surrender before the concerned Judge within a period of 15 days, this order shall stand automatically cancelled.

[b] the petitioner shall report before the respondent Police, daily at 10.30 a.m for a period of three weeks and thereafter, as and when required for the interrogation.



[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-
23/07/2019

/ TRUE COPY /

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

TO

1 THE ADDITIONAL DISTRICT JUDGE
OF PRINCIPAL SPECIAL COURT FOR EC & NDPS ACT CASES,
MADURAI.

2 THE INSPECTOR OF POLICE,
SELLUR POLICE STATION,
MADURAI CITY.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.D.RAMESH KUMAR, Advocate (SR-12129[I] dated 23/07/2019)

ORDER
IN
CRL OP (MD) No.9583 of 2019
Date : 23/07/2019