



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

Thursday, the Third day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.19374 of 2018

1.SAJAN NATH,
2 SURESH CHAND BALAI, ... PETITIONERS / ACCUSED NOS.1 & 2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
NIB CID, DINDIGUL DISTRICT.
(CRIME NO.107 OF 2018) ... RESPONDENT / COMPLAINANT

For Petitioners : MR.S.SIVAPRAKASH Advocate

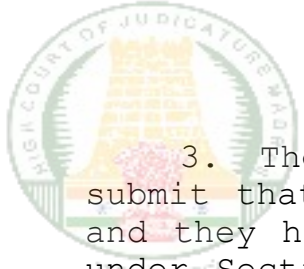
For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate(Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner, who was arrested by the respondent police on 04.09.2018, for the offences punishable under Sections 8(c) r/w.20 (b) (ii)(c) and 25 of NDPS Act, in Crime No.107 of 2018, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 04.09.2018, based on secret information, the respondent Police conducted a vehicle check-up nearby Sempatti roundana, the respondent intercepted a Maruthi Swift Dzire car, bearing Registration No. RJ 06 CA6276 and recovered 25 kgs of Ganja in two bags. The driver of the car Surenth Santh was accompanied with one Sajan Nath, they both belonged to Rajasthan and they do not know Tamil language. Hence the respondent police arranged one Mohamed Ali, who knows hindi and with the help of him the respondent police enquired about the above persons and completed all formalities as per the Act and obtained consent letter from the accused persons. The petitioners along with car and ganja was arrested and produced before the learned Judicial Magistrate No.II, Dindigul.



3. The learned counsel appearing for the petitioner would submit that petitioners have been falsely implicated in this case and they have not committed any offence. The mandatory provisions under Section 42(1) of the NDPS Act, was not followed. Further, the FIR clearly shows that the respondent Police created the false case. The secret information, under Section 42 of NDPS Act, has not been sent to the higher authorities. Search was not conducted in the presence of independent witness or gazetted office. Moreover the petitioners does not know about Tamil language and no one is available to translate the Tamil into Hindi at the raiding party and the consent letter does not disclose about the language and the information was not given to the relatives of the petitioners. He would also submit that the respondent police prepared athachi and arrest memo on the spot itself with the crime number which shows that the respondent had created story as if the petitioners have transported ganja.

4. Mr.K.Suyambulinga Bharathi, the learned Government Advocate (crl.side) appearing for the respondent, has filed a counter reiterating the contention of the FIR, seizure memo, confession and about the conditions enumerated under Section 37 of NDPS Act. It is further submitted that on 04.09.2018, the respondent had received the information about the above offence and based on the information, the respondent police went to the place. On identification of the informer, the respondent police intercepted the Maruthi Swift Dzire Car viz., , bearing Registration No. RJ 06 CA6276, which was driven by the petitioners. After completing all the formalities, obtained a consent letter and searched the car and found 25 Kgs of Ganja and seized the contraband, car, arrested the accused and registered the case. Thereafter, produced the petitioner along with the seized contraband before the learned Judicial Magistrate No.II, Dindigul and subsequently, the contraband was produced before the Principal Sessions Court, for NDPS cases in R.P.R.No.422 of 2018, dated 07.09.2018. Further, the seizure of 50 Kgs of Ganja is much more than the commercial quantity. The petitioners belongs to Rajasthan and if they were granted bail, they would escape from the clutches of law.

5. On perusal of the documents, apparently there is no violation of the statutory procedures. On perusal of Case Diary it is found that the signature of the petitioner for search, reason of his arrest, seizure memo and on his physical verification are in accordance with the said Act, and therefore, the contention that it is a case of non- compliance of Section 42 of the NDPS Act, cannot be accepted. Further, the contraband have been forwarded to the Court immediately. Considering the seizure of 50 Kgs Ganja, which is more than commercial quantity, this Court is not inclined to grant bail to the petitioners. The discrepancy with regard to the document, about timing and crime number are concerned, it is for the petitioner to raise the same during trial.



6. In the result, this Criminal Original Petition stands dismissed.

sd/-
03/01/2019

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

TO

1 THE INSPECTOR OF POLICE,
NIB CID, DINDIGUL DISTRICT.

2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1. CC to Mr.S.SIVAPRAKASH Advocate SR.No.201

ORDER
IN
CRL OP (MD) No.19374 of 2018
Date :03/01/2019

AE/PN/SAR1/07.01.2019/3P/5C