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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date on which reserved : 22/07/2019

Date on which reserved : 25/07/2019

PRESENT

The Hon'ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.9908 of 2019

Selvam

... Petitioner/Accused

Vs

The Inspector of Police,
West Police Station,
Kumbakoam,
Thanjavur District.
(Crime No.168 of 2019).

... Respondent/Complainant

For Petitioner : M/s.MA.Karunanithi,
Advocate.

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

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

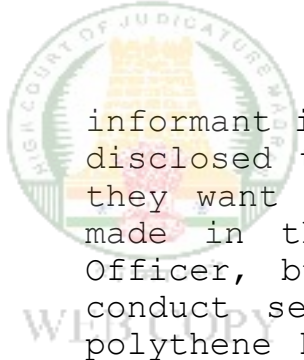
PRAYER :-

For bail petition in cr.no.168 of 2019 on the file of the respondent police

ORDER : The Court Made the following order :-

This petition has been filed seeking bail for the alleged offence punishable under Section 22(C) of NDPS Act, in Cr.No.168 of 2019, on the file of the respondent Police.

2.The case of the prosecution is that on 14.06.2019 at about 8.30 a.m, when the respondent Police team was on surveillance on 10 Feet Bridge, Kamban Nagar, near railway track, Kumbakonam, the



informant identified the petitioner and hence, the respondent Police disclosed their identity with the petitioner and informed him that they want to have a search and if he requires, the search can be made in the presence of either Judicial Magistrate or Gazetted Officer, but the petitioner has replied that the Police team can conduct search. Accordingly, the Police team searched a white polythene bag which was in possession of the petitioner and found 750 gms of 'Diazepam powder', which is a narcotic substance/ narcotic drug and hence, the respondent Police has arrested the petitioner and recorded confession statement and also seized the materials and sample also has been taken. Subsequently, the petitioner was brought to the Police Station and a case was registered in Cr.No.168/2019 under Section 22(C) of NDPS Act and the petitioner was sent for remand.

3.The learned counsel for the petitioner has submitted that the petitioner is an innocent person and he has been falsely implicated in the above case. He further submitted that as per the prosecution case, the F.I.R was registered on 14.06.2019 at about 11.30 a.m, but crime number has been mentioned in the confession statement said to have been recorded on the spot at 9.15 a.m and in the seizure mahazar said to have been prepared at 10.15 a.m and that itself would create a suspicion as to whether the alleged occurrence is true. He further submitted that the petitioner is in custody from 14.06.2019 and he is not having any bad antecedent and therefore, he prayed to grant bail to the petitioner.

4.The learned counsel for the petitioner, in support of his contentions, relied upon the following decisions:

i)**V.Kaluvan Vs. The District Collector & District Magistrate, Dindigul District and another, 1998-2.L.W.(Cr1.) 490**

ii)**A.Thilagaraj Vs. The Secretary to Government, Prohibition & Excise Department, Govt. of Tamil Nadu, 2003 (1) MWN (Cr.) DB 96**

5.Per contra, the learned Additional Public Prosecutor has submitted that on 14.06.2019, at about 8.30 a.m, when the police party was on surveillance at 10 Feet Bridge, Kamban Nagar, near Railway Track, Kumbakonam, the petitioner was found in possession of 750 gms of 'Diazepam powder' (narcotic substance/ narcotic drug) and hence, the petitioner was arrested and confession has been recorded from the petitioner and the said 'Diazepam powder' has been seized in a mahazar. He further submitted that since already secret information received, when the respondent was going for surveillance, he has taken a laptop and also a printer in his vehicle and the confession statement was recorded on the spot itself in the laptop and after taking print out, the signature was obtained on the spot itself. He further submitted that since the respondent is the Inspector of Police and after arresting the petitioner, he contacted his Police Station and after ascertaining the last crime number, he has mentioned the crime number also in the confession

statement as well as in the seizure mahazar and therefore, there is no irregularity in mentioning the crime number in the confession statement as well as in the seizure mahazar, which were prepared on the spot. He further submitted that the petitioner is having one previous case in Cr.No.188/2018 on the file of the Inspector of Police, Kumbakonam, West Police Station for the offence punishable under Sections 4(1) (a), 4(1-A) of Tamil Nadu Prohibition Act. He further submitted that investigation is at initial stage and therefore, he strongly opposed this petition.

6.In the F.I.R, it is stated that on 14.06.2019 at about 8.30 a.m, when the respondent Police was on surveillance on 10 Feet Bridge, near Kamban Nagar, near Railway Track at Kumbakonam, the informant identified the petitioner and the respondent Police, after disclosing their identity, they have searched the polythene bag, which was in possession of the petitioner and found that he was in possession of 750 gms of 'Diazepam powder' (narcotic substance/ narcotic drug) and hence, the petitioner was arrested and confession statement was recorded and the aforesaid contraband has been seized under the seizure mahazar. There is no explanation from the petitioner with regard to the possession of the aforesaid contraband.

7.In **V.Kaluvan Vs. The District Collector & District Magistrate, Dindigul District and another, (cited supra)**, a Division Bench of this Court, while disposing of HCP, has observed in paragraph No.2 as follows:

"2.We do not deem it necessary to narrate the facts in detail which led to passing of the impugned order of detention for this Habeas Corpus Petition will have to be allowed on the short ground of non application of mind. In the grounds of detention, the Detaining Authority has stated that the detenu was in possession of 10 litres capacity black plastic can which contained illicitly distilled arrack. Each about 500 ml of illicitly distilled arrack was taken into two 750 ml sample bottles from the plastic can and sealed and labelled and the remaining illicitly distilled arrack was destroyed in the presence of witnesses. One black plastic empty can, one glass tumbler and cash Rs.10/- were seized under cover of mahazar by the Inspector of Police in the presence of witnesses at 13.30 hours on 10.08.1997. Afterwards the Inspector of Police brought the detenu with the properties seized to the Ammayanaickanur Police Station at about 14.30 hours on 10.08.1997 and registered a case in Ammayanaickanur P.S.Crl.No.417 of 1997 under S.4(1)(i). T.N.P Act, and 328 I.P.C. In the destruction mahazar copy, supplied to the detenu, we see the crime number of 417 of 1997. The said



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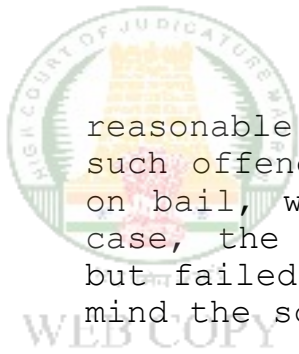
destruction mahazar was conducted at 13.30 hours on 10.08.1997 whereas the case was registered only at 14.30 hours on 10.08.1997. Before the case could be registered, the mahazar which was prepared earlier, the crime number which could not have been found. This discrepancy ought to have been got clarified from the Sponsoring Authority by the Detaining Authority, which has not been done. This is a clear case of non application of mind on the part of the Detaining Authority which will be sufficient to hold in favour of the detainee."

8. In **A.Thilagaraj Vs. The Secretary to Government, Prohibition & Excise Department, Govt. of Tamil Nadu**, (cited supra), a Division Bench of this Court, while disposing of HCP, has observed in paragraph No.5 as follows:

"The facts of this case also reveal that though the F.I.R was registered at 18.00 hrs on 08.09.2001, the seizure mahazar was prepared much prior to the registration of the F.I.R at 17.50 hrs. on 08.09.2001 and the same contains the Crime number. It is not brought to our notice as to whether any clarification as to the above was obtained by the detaining authority from the sponsoring authority. In the absence of the same, the impugned order of detention cannot be sustained. In our view, the judgment of the Division Bench, referred to above is applicable to the facts of the present case."

9. In this case, the learned Additional Public Prosecutor has submitted that the respondent took the laptop and printer in his vehicle to the place of occurrence, when he was going for surveillance and after arresting the accused, he recorded confession statement in the laptop and thereafter, he took print out and got signature. Further, he has submitted that since the respondent being an Inspector of Police, he contacted his Police Station and after verifying the last crime number, he has mentioned the crime number in the confession statement and also in the seizure mahazar. Whether the said explanation has to be accepted or not can be decided only at the time of disposal of the main case. At this stage, this Court cannot entertain any doubt with regard to the said explanation. Further, as already pointed out that the respondent has clearly stated in the F.I.R that the petitioner was found in possession of contraband and for that, no explanation is forthcoming from the petitioner. Therefore, the aforesaid decisions will not help the petitioner.

10. In this case, 750 gms of 'Diazepam powder' was seized from the petitioner. The said quantity is a commercial quantity. 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.

11. 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."

12. In this case, the prosecution not only relied upon the confession given by the accused, but also the recovery made from the petitioner. Further, in the F.I.R itself, it is clearly stated that the petitioner was found in possession of 'Diazepam powder' and for that, no explanation is forthcoming from the petitioner. Further, the petitioner is having one previous case on his credit under the Tamil Nadu Prohibition Act. Therefore, this Court is of the view that the petitioner has not made out a case for getting bail.



13. In the result, this petition is liable to be dismissed.
Accordingly, this petition is dismissed.

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25/07/2019

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

TO

- 1 THE JUDICIAL MAGISTRATE
KUMBAKONAM, THANJAVUR DISTRICT
- 2 -DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
THANJORE DISTRICT AT KUMBAKONAM.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 4 THE INSPECTOR OF POLICE
WEST POLICE STATION, KUMBAKOAM,
THANJAVUR DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.9908 of 2019
Date : 25/07/2019

VS
ES/PN/SAR 4/20.08.2019/6P/6C