



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date on which reserved : 02/08/2019

Date on which pronounced : 14/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.10629 of 2019

Naveen Kumar

... Petitioner/2nd Accused

Vs

The State rep.by
The Inspector of Police,
NIB CID, Theni.
Crime No.15/2019

... Respondent/Complainant

For Petitioner : M/s.S.Poornachandran Advocate

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

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

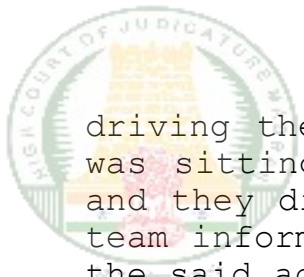
PRAYER :-

For bail in Cr.No.15/2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

The petitioner/accused No.2, who was arrested and remanded to judicial custody on 21.02.2019, for the offences punishable under Sections 8(c) r/w 20(b) (ii) (c) and 25 of NDPS Act in Cr.No.15 of 2019 on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that on 20.02.2019 at about 18.00 hours, on receiving a secret information, the police party, led by Mr.Subramanian, Special Sub Inspector of Police, was on vehicle checking on Kuchanur - Uppukkottai road near Kulaiyanur Selvam's garden and at that time, an auto bearing Regn.No.TN-67-AZ-5293 was coming from Cumbum towards Bodi. The Police party stopped the said auto and found that the accused No.3 viz., Karthick was



driving the said auto and the petitioner herein Naveen Kumar (A-2) was sitting on the rear seat. The Police team enquired with them and they disclosed their names and address. Thereafter, the Police team informed to them that they want to search the said auto and if the said accused persons require that the search can be conducted in the presence of a gazetted Officer or a Magistrate. But the said accused persons replied that the Police themselves can make search and thereafter, the Police team searched the said auto and found on the rear side seat a white gunny bag containing 21 kgs of ganja. The said ganja was seized under a mahazar and thereafter, sample has been taken and the accused Nos.2 and 3 were arrested and they voluntarily gave confession statements and the same were recorded. Based on the said confession, the accused No.1 was implicated. Thereafter, the accused Nos.2 and 3, the contraband and the said auto were brought to the police station and registered a case in Cr.No.15/2019 under Sections 8(c) r/w 20(b) (ii) (c) and 25 of NDPS Act and remanded to judicial custody.

3.The learned counsel for the petitioner has submitted that on 20.02.2019 at 12.20 p.m, when the petitioner was standing nearby a tea shop at Theni, the respondent Police came there and forcibly taken the petitioner to the Police Station and the said fact has been recorded in the CCTV camera, which was installed before the said tea shop and therefore, the petitioner could not have been found in possession of ganja at 18.00 hours, as alleged in the complaint. He further submitted that the petitioner has produced CCTV footage before this court, when the previous petitions came up for hearing and only thereafter in the counter affidavit filed by the respondent in Crl.O.P.(MD).No.6829/2019, the respondent has stated that on 20.02.2019, the Sub Inspector of Police, NIBCID, namely Rajasekaran got secret information that the petitioner/accused herein along with one Karthick illegally transported ganja and the Sub Inspector of Police, NIBCID forwarded the said message to the higher officials and proceeded to the spot i.e one M.S.Tea Stall located at Cumbum Mettu Road and enquired the petitioner herein and since the petitioner was not in possession of any contraband, the respondent let the petitioner there itself. He further submitted that if really the petitioner was let in the said place itself at 12.20 p.m, the respondent Police would have mentioned the said fact in the Case Diary(CD) and also in the General Diary (GD) and hence, he requests the Court to verify the Case Diary as well as the General Diary. He further submitted that the contraband was not seized in the presence of independent witnesses and the same is fatal to the prosecution case. He further submitted that though it is stated in the seizure mahazar and also in the arrest memo that after bringing the accused and the contraband to the Police Station, FIR was registered, the crime number has been mentioned in the said documents and that also would show that the petitioner was already taken to the Police Station and subsequently, the respondent has registered the above F.I.R. He



further submitted that the petitioner is in custody for the past 168 days and therefore, he prayed to grant bail to the petitioner.

4.The learned Additional Public Prosecutor, on the contrary, has submitted that merely because the seizure was not made in the presence of independent witnesses will not be fatal to the prosecution. The arrest card was prepared only after registration of the case and it contains crime number and therefore, the same cannot be fatal to the prosecution case. He further submitted that already, 2 similar type of cases are pending against the petitioner. He further submitted that on 20.02.2019, on secret information, the respondent Police went to one M.S.Tea Stall, located at Cumbum Mettu Road and found the petitioner there and after enquiry, since he was not found in possession of any contraband, he was allowed to go there itself and subsequently, at 16.00 hours, the respondent has received another information and based on the same, the respondent proceeded to Kuchanur to Uppukottai road near one Selvam's garden and conducted vehicle check up and at about 18.00 hours, one Auto bearing registration No.TN-67-AZ-5293 came and the said auto has been driven by one Karthick and the petitioner herein sat in the rear side seat and it was found that one white colour gunny bag was in possession of the petitioner and the same was searched and found with 21 kgs of ganja in the said bag and hence, the present case has been registered. He further submitted that the previous bail applications, which were filed by the petitioner in Crl.O.P.(MD). Nos.3976/2019 and 6829/2019 were dismissed and thereafter there is no change of circumstances for entertaining this application and therefore, he prayed to dismiss this petition.

5.As per the directions of this Court, the learned Additional Public Prosecutor has produced Case Diary (CD) and also General Diary (GD) for perusal of this Court. In the Case Diary, it is stated that on 20.12.2019 at about 16.00 hours, the respondent has received a secret information and the same has been recorded in the General Diary at 16.10 hours and thereafter, the said information has been forwarded to superior officers and proceeded to the Kuchanur-Uppukottai road, near one Selvam's garden and conducted vehicle check-up and with regard to the same, entry has been made in the General Diary on 20.02.2019. But, no such similar entry has been made with regard to the earlier information said to have been received by the respondent, as the petitioner and one Karthick were illegally transporting ganja.

6.According to the learned counsel for the petitioner, on 20.02.2019 at about 12.20 p.m, when the petitioner was standing nearby a tea shop at Theni, the respondent has forcibly took the petitioner at 12.26 p.m to the Police Station and the same has been recorded in the CCTV camera. In the counter affidavit filed by the respondent, though he has not specifically stated that on 20.02.2019 at 12.26 p.m, he has taken the petitioner, he has admitted that on



20.02.2019, he has got secret information that the petitioner herein along with one Karthick were illegally transporting ganja, he has forwarded the said message to the higher officials and proceeded to the spot i.e one M.S.Tea Stall, located at Cumbum Mettu road and enquired the petitioner herein and after enquiry, in the same place, since he did not find any contraband, he let the petitioner there itself. The aforesaid statement would lead to an inference that the petitioner was taken by the respondent Police at 12.26 p.m in front of the Tea Stall and the same has been recorded in the CCTV camera and that is why as an after-thought, he has admitted certain facts in his counter affidavit. If really, the petitioner was let in the said place itself, he would have mentioned the said fact in the General Diary. But the respondent has not mentioned the said facts in the General Diary. The aforesaid facts would probablize the case of the petitioner.

7.In this case, if the petitioner was taken into custody on 20.02.2019 at 12.26 p.m itself, the contention of the respondent that on the same day at 18.00 hours, the petitioner was arrested with contraband at Kuchanur-Uppukottai road, near one Selvam's garden is highly doubtful.

8.Taking into consideration of the aforesaid facts, this Court is of the view that the petitioner has satisfied the conditions as envisaged under Section 37(1)(b)(ii) of the NDPS Act. Therefore, this Court is inclined to grant bail to the petitioner, by imposing certain conditions:-

[a] the petitioner is ordered to be released on bail on his executing 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 learned Special Judge for EC & NDPS Act Cases, Madurai.

[b] the petitioner shall report before the respondent police daily at 10.00 a.m for a period of one month and thereafter, as and when required for the interrogation.

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

[d] the petitioner shall not tamper with evidence or witness 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.

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sd/-
14/08/2019

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

TO

- 1.THE SPECIAL JUDGE FOR EC AND NDPS ACT CASES,
MADURAI.
 - 2.THE INSPECTOR OF POLICE,
NIB CID, THENI.
 - 3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 - 4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to Mr.S.POORNACHANDRAN Advocate SR.No.13508

ORDER
IN
CRL OP(MD) No.10629 of 2019
Date :14/08/2019

VS
TK/VR/SAR.1/14.08.2019/5P/6C