



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

Date : 18/12/2019

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.17166 of 2019

Gopi Jeganathan

... Petitioner/Accused No.1

Vs

State through the Inspector of Police,
NIB CID, Theni,
(Crime No.184/2017).

... Respondent/Complainant

For Petitioner : M/s.A.John Vincent,
Advocate.

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No.184 of 2017 on the file of the respondent

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner was originally arrested by the respondent on 02.11.2017 for the offences under Sections 20(b)(ii)(c) and 25 of Narcotic Drugs and Substances Act, 1985. He was detained as a drug offender under Act 14 of 1982. He was later granted bail. The same was subsequently cancelled. Following cancellation, the petitioner was rearrested on 23.10.2019. The petitioner seeks bail.

3. The learned counsel appearing for the petitioner raised a number of contentions. His foremost contention was that recovery of 180 kilograms of Ganja from the petitioner's vehicle cannot be believed as the car boot cannot hold the said quantity.

4. The second contention is that the requirement laid down under Section 42(2) of NDPS Act was not complied with.



5. The third contention is that the procedure laid down in Section 50 of NDPS Act was also not followed.

6. The fourth contention is that the confession of the petitioner which was said to have been prepared at around 01.30 p.m. on the occurrence date is in a typed format while the athachi prepared at the same time is in manuscript. He therefore submitted that the entire arrest, confession and recovery has been stage managed subsequently, for the purpose of foisting a false case against the petitioner herein.

7. He would also strongly point out that inasmuch as the petitioner is not having any previous case he is not likely to commit any offence if he is let out on bail. He also pointed out that the petitioner was earlier released on bail in this case and during the said period, he did not come under adverse notice. He therefore submitted that the second limb of Section 37 of NDPS Act stands fully satisfied in this case.

8. Taking note of all the facts and circumstances, he wanted this Court to grant bail to the petitioner herein.

9. The learned Government Advocate (Crl. Side) strongly oppose the grant of bail.

10. I carefully considered the rival contentions.

11. In order to satisfy my consciences, I wanted a live demonstration so that it can be shown the contraband can be stuffed into the car boot in question. The petitioner's counsel made a strong submission that it is simply impossible that the car boot can hold the contraband in question. I made it clear that if the prosecution satisfied the Court, costs will follow.

12. Yesterday ie., 17.12.2019, the petitioner's counsel along with his colleagues went to the office of the respondent. Of course, the petitioner's counsel would stick to his earlier stand. According to the prosecution, it could stuff the entire contraband into the vehicle-boot after folding the back seat. The petitioner's counsel would state that this was never the case of prosecution. The prosecution never took the stand that when the recovery was made on 02.11.2017, the back seat of the car was in a folded condition. But then, I am of the view that on this ground the case of the prosecution cannot be thrown out. The car in question is a TATA Indigo Car. It is stated that there is no partition between the boot and the remaining part of the car and if the back seat is folded, the entire contraband can be stuffed through the boot itself. In any event, I am not going further into this point, I leave it open to the petitioner to argue his case in the trial.

<https://hcservices.courts.gov.in/hcservices/Services.aspx> I am satisfied with the stand of the prosecution. I



make it clear that this is only a *prima faice* finding and it will not affect the petitioner's defence in the trial.

13. The learned Government Advocate (Crl. Side) pointed out that source information was received on 02.11.2017 at about 10.00 a.m. about the movement of the contraband. It is seen that immediately at around 10.20 a.m., the Inspector of Police, NIB CID, informed his superior through cell phone and a written copy was also received by the Superior Officer at around 13.00 hours. The signature of Deputy Superintendent of Police, NIB CID, Dindigul is also found. Thus, there has been compliance of the requirement set out in Section 42(2) of NDPS Act.

14. The third contention with regard to non-compliance of procedure laid down in Section 50 of NDPS Act, has to be stated only to be rejected. Because, as rightly pointed by the learned Government Advocate (Crl. Side), the recovery was not from the person of the accused but only from the vehicle which was said to have driven by the accused. Even then, it is seen that the petitioner herein has affixed his signature in the consent letter. Thus, for the purpose of deciding this bail petition, I have to necessarily hold that the requirement set out in Section 50 of NDPS Act has also been complied with.

15. The next serious contention is regarding the manner in which the confession of the petitioner has been made ready. As pointed by the petitioner's counsel, the attachi was prepared at around 14.00 hours on 02.11.2017. It must have been prepared on the spot in question. It has been handwritten by the police officials. But then, the confession prepared one hour earlier is in a typed format. Therefore, I find considerable force in the petitioner's contention that the confession would not have been prepared contemporaneously, it must have been prepared later. I find it difficult to believe that a computer typed confession could have been made ready in the spot in question. Thus, this throws some doubt on the prosecution case. In normal circumstances, I might have been inclined to grant bail on this sole ground but I am persuaded by the submission of the learned Government Advocate (Crl. Side) that if the recovery has been pursuant to the said confession then the prosecution case can be rejected. But that is not the case here. The interception of the petitioner at Devathanapatti-Vaigai Dam Road on 02.11.2017 was at around 11.30 a.m. The recovery of the contraband was soon thereafter. The recovery of the contraband is obviously not based on the petitioner's confession nor is it pursuant thereto. Therefore, the irregularity I find in the aspect of confession is not sufficient for me to come to the conclusion that the petitioner is not likely to have committed the offence in question.

16. As rightly pointed by the learned Government Advocate (Crl. Side), Section 37 of NDPS Act clearly limits the power of the High



Court to grant bail and bail can be granted only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. In this case, merely because the confession is in a computer typed format, I am not able to hold that this first limb of Section 37 of NDPS Act is satisfied.

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17. Of course, in view of the fact that the petitioner is not having any previous case, I can give a finding that the petitioner is not likely to commit any offence while on bail. But then, both the tests laid down in Section 37(1)(ii) of NDPS Act will have to be satisfied. They are conjunctive in nature. Therefore, in view of the availability of *prima facie* materials, I am not in a position to grant bail.

18. The learned Government Advocate (Crl. Side) states that the trial in this case has already commenced. Some of the witnesses have already been examined. There are totally 12 witnesses. The learned Government (Crl. Side) firmly states that the entire trial will be over within a period of 60 days. Therefore, taking into account all these aspects, this criminal original petition stands dismissed.

sd/-
18/12/2019

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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, THENI
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.A.JOHN VINCENT, Advocate (SR-22113[I]dated 18/12/2019)

ORDER IN
CRL OP(MD) No.17166 of 2019
Date :18/12/2019

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ES/JC/SAR 3/03.01.2020/4P/5C

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