



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

Date : 20/12/2019

PRESENT

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

CRL OP(MD). No.18655 of 2019

S.MADHAN

... PETITIONER/ACCUSED NO.1

VS

STATE REP. BY
THE INSPECTOR OF POLICE,
SUBRAMANIPURAM POLICE STATION,
MADURAI.
CRIME NO.529/2019.

... RESPONDENT/COMPLAINANT

For Petitioner : M/s.M.Gururaj,
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.529 of 2019 on the file of the respondent police.

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 is in custody since 13.10.2019 for the offences under Sections 8(C) read with 20(b)(ii)(c), 25 and 29(1) of NDPS Act in Crime No. 529 of 2019 on the file of the respondent police. He seeks bail.

3. The case involves commercial quantity of Ganja, weighing 24 Kg. Therefore, the tests laid down in Section 37 of the Narcotic Drugs and Psychotropic Substances(NDPS)Act, 1985 Act will have to be



4.The case of the prosecution is that on 12.10.2019, Thiru.A.Murali, Sub Inspector of Police, C-2, Subramanipayuram Police Station, Madurai, received information about illegal trafficking of Ganja. The informant agreed to identify the accused. The information was duly reduced into writing and also informed to the higher officials. Based on the information Thiru.Murali waited beneath the bridge located near the place known as Kovalanpottal, TVS Nagar, Madurai with police party. According to him, a Toyota Glanza Car bearing registration No.TN 58 BB 9474 was about to pass by the spot. It was intercepted. According to the prosecution, on seeing the police party, two of the accused by name Bottle Mani and Nari Vignesh managed to escape from the car. But then, the petitioner herein who was said to have been driving the car was apprehended. The petitioner gave his consent for searching him as well as the vehicle. During the course of search in the car boot, the police found a gunny bag containing 12 packets of Ganja totally weighing 24Kgs. After completing all the formalities and taking the statement of the petitioner and also arresting him, he was brought to the Station and Crime No.529 of 2019 was registered for the offences under Sections 8(c) read with 20(b)(ii)(C), 25 and 29(1) of NDPS Act. Bottle Mani who is shown as A3 died during investigation. He is said to have fallen into a well when chased by a police party near Villupuram. A2 Nari Vignesh is still absconding.

5.The learned counsel for the petitioner alleges that he has been falsely implicated. According to him both he and Bottle Mani were implicated as accused in a previous murder case. The learned counsel for the petitioner made certain serious allegations as to why the petitioner has been falsely and on malafide grounds, implicated in this case. I am not inclined to elaborate those contentions.

6.The case of the petitioner is that he is residing in an apartment in Agrini Complex which is located in the heart of Madurai City. According to him, he was apprehended from his apartment on 12.10.2019. The petitioner had purchased a brand new car. Since, the car key was with the petitioner, the same was also forcibly taken away from his house. The movements of the police were actually captured in the CCTV footage, but the petitioner claims that the police managed to erase the same later. However a fleeting screenshot has been preserved. In fact, on the previous occasion, the learned counsel for the petitioner showed a screenshot which indicated a movement of two persons. The learned counsel for the petitioner asserted that they were very much part with the special team which came to his house and took him away.

7.I called upon the Deputy Commissioner to file an affidavit in this case. The Deputy Commissioner filed an affidavit stating that

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respondent Inspector of Police is also taking the stand that none of the police personnel attached to his station are in the CCTV footage.

8.I refrain from probing the matter further because I am of the view that the petitioner can be granted bail on a technical ground.

9.According to the respondent police, they received information at around 1.p.m., on 12.10.2019. The petitioner had been specifically named in the said information. The petitioner was apprehended near Kovalanpottal at around 02.00pm. He was searched at about 2.10 p.m. He was arrested at the spot itself at 4.00 p.m. He was brought to the station at 4.45 p.m., and the First Information Report was registered at 5.00 p.m. The consent letter as well as the confession were obviously prepared near the spot itself. The police would claim that they had taken a laptop with them and that the consent letter as well as the confession and other documents were typed in the laptop.

10.But I find it very difficult to believe this story. Bottle Mani who was shown as A3 in this case, was identified on the spot and he is said to have escaped. The police party comprised six persons. Bottle Mani was a notorious criminal and was much wanted by the respondent police. I find it strange that the police party did not make any effort to chase Bottle Mani and Nari Vignesh. I have personal knowledge of the topography of the place. Bottle Mani and Nari Vignesh allegedly fled on foot. It would have been very very easy for the police to apprehend those two accused. The police version is that they saw all the three accused inside the car near Kovalanpottal on the occurrence date and time. But they could arrest only the petitioner. They did not even chase the other two accused and allowed them to escape. These aspects lead me to the conclusion that the arrest and recovery did not take place in the manner suggested. The petitioner's claim that he was arrested from his house and his vehicle was also taken away from his residential campus, is more probable.

11.I am of the view that the petitioner is not likely to have committed the offences in question. The petitioner is ofcourse, having a previous case of murder. He is not having any case under the NDPS Act. Therefore, I am of the view that the petitioner is not likely to commit any offence while he is out on bail. Since, both the tests laid down under Section 37 of NDPS Act are satisfied in this case, I am inclined to enlarge the petitioner on bail with certain conditions. Accordingly, the petitioner is ordered to be released on bail, subject to the following conditions;

(i) 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 Principal Special Court for EC



(ii) the petitioner is directed to appear before the respondent police as and when required for the interrogation.

(iii) 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].

sd/-
20/12/2019

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

TO

- 1 THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EC
AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
SUBRAMANIPURAM POLICE STATION,
MADURAI.
- 3 THE OFFICER INCHARGE,
DISTRICT PRISON, THENI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.GURURAJ, Advocate (SR-22352[I] dated 20/12/2019)

ORDER
IN
CRL OP(MD) No.18655 of 2019
Date :20/12/2019

PNN
JM/PN/SAR 3/03.01.2020/4P/6C