



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

Date : 20/12/2019

PRESENT

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

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CRL OP (MD) Nos.19043 and 17871 of 2019

Tamilarasan ...Petitioner/Petitioner/Accused No.2
in Crl.O.P.(MD)No.19043 of 2019

A.Pandi ... Petitioner / Accused No.1
in Crl.O.P.(MD)No.17871 of 2019

Vs

State Represented by
The Inspector of Police,
Cumbum Police Station,
Cumbum, Theni District.
(In Crime No.280/2019).

... Respondent/Respondent/Complainant
in Crl.O.P.(MD)No.19043 of 2019
... Respondent/Complainant
in Crl.O.P.(MD)No.17871 of 2019

In Crl.O.P.(MD)No.19043 of 2019

For Petitioner : M/s.G.Prabhu Rajadurai,

In Crl.O.P.(MD)No.17871 of 2019

For Petitioner : M/s.S.Sukumar

For Respondent

: Mr.A.Robinson,
Government Advocate (Crl.Side)
(in both Crl.O.Ps.)

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

Prayer in CRL OP(MD)No. 19043/ 2019 :

For Bail in Crime No. 280/2019 on the file of the
Respondent Police.

Prayer in CRL OP(MD)No. 17871/ 2019 :

For Bail in Crime No.280/2019 on the file of the Respondent
Police.



COMMON ORDER : The Court made the following order :-

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

2. The petitioners are shown as accused in Crime No.280 of 2019 for the offences under Sections 8(c) read with 20(b)(ii)(c) NDPS Act, 1985 on the file of the respondent police. They seek bail.

3.The case involves 25Kgs of Ganja. It is a commercial quantity. Therefore, the petitioners will have to necessarily satisfy the tests laid down in Section 37 of the NDPS Act. The respondent has filed a detailed counter opposing the grant of bail.

4.The learned counsel appearing for the accused would submit that no occurrence as claimed by the prosecution ever took place. Certain differences of opinion had arisen between Al Pandi and the local police. The NIB, therefore warned that the first accused should move out of the place. In this regard, a tele-conversation had taken place between an NIB official on the one hand and the accused on the other. The learned counsel for the petitioner produced a transcript of the same.

5.Be that as it may, it has been conclusively established that on 31.08.2019, at about 11.53 a.m., the police went to Ulagathevan street where Al is residing and returned within 8 minutes. This has been captured in the CCTV camera installed in a nearby pawnbroker shop. One can see the police vehicle (TATA SUMO VICTA) of the respondent police going in the said street and returning shortly thereafter. In fact, four police men in two two-wheelers are going in front. The learned counsel for the petitioners would state that both the accused were arrested from the house of Al and bundled into the said car.

6.The respondents have filed a detailed counter. In fact, the respondent police do not deny that the police vehicles (a Car and two two-wheelers) were crossing the street in question, at the time mentioned by the accused. But they would state that merely because, the vehicles' movement was noticed in the CCTV footage, it does not establish that the police party arrested the accused and that they were present in the vehicle in question during the said time.

7.The learned counsel for the petitioners in response would point out that if the vehicle had nearly gone past, it may be otherwise. But in this case, the police party in three vehicles entered the street in question and after about 8 minutes, returned and re-passed through the very same spot. This can only mean that the police party had gone there for a specific purpose and since the purpose was accomplished, they returned.



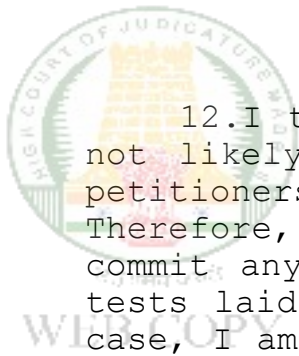
8.I carefully went through the contents of the First Information Report. According to the First Information Report, the respondent received secret information at around 12.00 noon on 31.08.2019 about the trafficking of the contraband. The information was reduced into writing and special report was also submitted. Thereafter, the respondent police went to Kaattupallivasal Road and were waiting near a bridge known as 18th Channel Bridge. They saw two persons coming from a distance and going from east to west. One person was carrying a white plastic gunny bag as a head load. The informant identified those two persons as those involved in the illegal trafficking and left the spot. The prosecution would claim that they intercepted them at around 1.15 pm. The accused waived their right under Section 50 of NDPS Act and stated that the Sub Inspector of Police himself can search them. The gunny bag was opened and it was found to contain the contraband in question.

9.The learned counsel for the petitioner would also pointed out that the recovery according to the prosecution was on 31.08.2019. But then, the contraband was produced before the Special Court only on 03.09.2019. It was not even produced at the time of remand. As rightly pointed out by the learned Government Advocate, if the recovery is otherwise established non compliance of the mandate set out in Section 52(A) of the NDPS Act, is not really fatal. He relied on a decision of the Hon'ble Supreme Court, reported in 2019 SCC Online 1267 in the case of *State of Rajasthan Vs. Sahi Ram* for the said proposition. The Honourable Supreme Court held as follows:

"21.If the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before this Court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court."

10.In this case, the non-production of the material by itself may not throw doubt on the prosecution. But when it is coupled with the circumstances set out above the inference is otherwise. I am therefore inclined to hold that the petitioners are not likely to have committed the offences.

11.After, carefully considering the materials furnished by the accused in the form of CCTV footage, I am satisfied that the entire arrest and recovery as projected by the prosecution, is highly doubtful and suspicious. According to the police, information about the trafficking reached them at 12 noon on 31.08.2019. But even before the movement of entire police team near the residence of the accused was captured in a CCTV. There is absolutely no explanation forthcoming from the respondent regarding this.



12.I therefore come to the conclusion that the petitioners are not likely to have committed the offence in question. Both the petitioners are not having any previous cases under the NDPS Act. Therefore, I am of the view that the petitioners are not likely to commit any offence while they are 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 petitioners on bail with certain conditions.

13.Accordingly, the petitioners are 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 and NDPS Act Cases, Madurai.

(ii) the petitioner is directed to appear before the respondent police every Monday at 10.30 a.m., for the interrogation until further orders.

(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 PRINCIPAL SPECIAL JUDGE,
FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
CUMBUM POLICE STATION, CUMBUM,
THENI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADRAS HIGH COURT, MADURAI.



+1 CC to M/s.G.PRABHU RAJADURAI, Advocate

(SR-22372[I] dated 20/12/2019)

+1 CC to M/s.S.SUKUMAR, Advocate (SR-22444[I] dated 20/12/2019)

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ORDER IN

CRL OP (MD) Nos.19043 and
17871 of 2019

Date :20/12/2019

PNN

ES/VR/SAR 3/03.01.2020/5P/7C