

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.05.2020

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.6676 of 2020

1. M. ShanmugaPriya,
W/O- Murugan
No.109, West 4th Street
Pudukottai, Tamil Nadu

2. M.A Srimanikandan,
S/O – Ashokan
No. M/71, Poonga Nagar
Raja GopalPuram
Pudukottai, Tamil Nadu

... Petitioners

-Vs

The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai
(NCB F.No. 48/1/11/2019-NCB/MDS)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in connection with C.C. No. 17 of 2020 on the file of the Special Judge, II Additional Special Court for Exclusive Trial of Cases Under NDPS Act, Chennai.

For Petitioners : Mr.V.Johnson Yuvaraj

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor
(DRI cases)

ORDER

The petitioners, who were arrested and remanded to judicial custody by the respondent on 10.08.2019 for the alleged offences under Sec. 8(c) r/w 20(b)(ii)(C), 28 and 29 of the Narcotics and Psychotropic Substances Act, seek bail.

2. The case of the prosecution is that respondent received information on 09.08.2019, and on the basis of the specific information, a team of NCB officers went to Egmore Railway Station and procured two independent witnesses, and intercepted the petitioners and allegedly upon enquiry by the NCB officers, the 1st petitioner revealed that they were in possession of 62 Kgs of ganja. The bags of the accused were taken to Platform No. 5 and after explaining Sec. 50 of the NDPS Act, on the request of the Accused persons, the NCB officials opened the bags one by one and it was found that the bags contained “brownish green colour dry leaves”. The same was tested in a “DD Kit” which answered positive for Ganja and on the spot itself samples were drawn, which were packed, sealed and marked. On weighing, the total quantity of the ganja was 62.600 Kgs. Seizure Mahazaar

proceedings were drawn on the spot and the entire mahazaar proceedings were completed at 13.30 hours on 10.08.2019. Thereafter, the petitioners were taken to the Office of the Respondent situated at Office of the Zonal Director, Narcotics Control Bureau, Plot No. FD2, 2nd Main Road, 3rd Avenue, TNHB Layout, Ayappakkam, Chennai – 600 077 and on the next day .i.e., 11.08.2019, the petitioners were arrested after allegedly recording their confession statement under Sec. 67 of the NDPS Act.

3. The further case of the prosecution is that the petitioner is said to have allegedly received the contraband from a person at Vishakapattinam, which is concealingly packed in trolley bags and travel bags with the instruction to deliver the bags to a person named Vanitha in Pudukottai. The respondent police filed final report in the form of complaint on 30.01.2020.

4. The learned counsel for the petitioners submitted that as per the complaint, neither the person from Vishakapattinam who gave the contraband to the petitioners nor Vanitha to whom the contraband was to be delivered were not arrested nor there was any investigation regarding that aspect. Except the alleged confession of the petitioners, no other material is available to show that the petitioners were in conscious possession of the alleged contraband.

5. He further submitted that as per the provisions under Section 50(4) of the NDPS Act, no female shall be searched by anyone excepting a female, which has not been strictly followed by the respondent in respect of the first petitioner. He further submitted that under Section 42 of NDPS Act, within seventy two hours from the arrest, the report should be forwarded to the superior officer, which has also not been followed by the respondent. He further submitted that the first petitioner is suffering from infraumbilical Incisional Hernia as such she is continuously getting treatment for the same. He further submitted that based on the confession statement of the co-accused only, the petitioners have been implicated in this case. Therefore, he sought for bail to the petitioners.

6. The learned Special Public Prosecutor submitted that the case has been taken cognizance in CC.No.17 of 2020 before the Special Judge, II Additional Special Court for Exclusive Trial of Cases Under NDPS Act, Chennai and the same is pending for framing of charges. He further submitted that the provisions under Section 42 and 50(4) of the NDPS Act have been complied with by the respondent Police, and these pleadings can only be considered at the time of trial. Further, the contraband received from the

petitioners are commercial quantity as such he vehemently opposed to grant bail to the petitioners.

7. It is seen that the respondent have recovered contraband weighing 62 kg from the petitioners, which is a commercial quantity as such there is a clear bar under Section 37 of NDPS Act and the petitioners did not make out any case to overcome the bar under Section 37 of NDPS Act. Further, the case has been taken cognizance in CC.No.17 of 2020 before the Special Judge, II Additional Special Court for Exclusive Trial of Cases Under NDPS Act, Chennai and the same is pending for framing of charges. Therefore, this Court is not inclined to grant bail to the petitioners.

8. Accordingly, this criminal original petition is dismissed.

05.05.2020

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Special Judge,
II Additional Special Court for Exclusive
Trial of Cases Under NDPS Act,
Chennai.
2. The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai
3. The Public Prosecutor,
High Court of Madras.



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