

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

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

CRL.O.P.Nos.15066 & 11853 of 2020

Crl.OP.No.15066 of 2020

M.A.Srimanikandan

... Petitioner

Vs.

Union of India Rep by its
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in CC.No.17 of 2020 on the pending trial of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner

:

Mr.D.Selvam

For Respondent

:

Mr.N.P.Kumar,

Special Public Prosecutor for NCB cases

Crl.OP.No.11853 of 2020

M.Shanmugapriya

... Petitioner

Vs.

Union of India Rep by its
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in CC.No.17 of 2020 on the pending trial of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.D.Selvam
For Mr.M.Baskaran

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor for NCB cases

COMMON 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 petitioners are 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. Mr.D.Selvam, the learned counsel for the petitioners would submit that the respondent already completed investigation and also filed challan before the Special Court and there were no incriminating evidence or material as against the petitioners except voluntary confession statement recorded under Section 67 of NDPS Act. In this regard, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Mohammed Fasin Vs. The State Rep. by the Intelligence Officer in Crl.A.No.296 of 2014 dated 04.09.2019, wherein it is observed as follows:

We, for the decision of this case, therefore, proceed on the premise that the confession is admissible. Even if it is admissible, the Court has to be satisfied that it is a voluntary statement, free from any pressure and also that the accused was apprised of his rights before recording the confession. No such material has been brought on the record of this case. It is also well settled that a confession, especially a confession recorded when the accused is in custody, is a weak piece of evidence and there must be some corroborative evidence. The confession of the co-accused, which was said to be a corroborative piece of evidence, has been discussed above and is of no material value. Therefore, other than the two confessional statements – one of the co-accused and the other of the accused, the prosecution has gathered no evidence to link the appellant with the commission of the offence. As such, without going into the

legality of the admissibility of the confession, we hold that even if these confessions are admissible then also the evidence is not sufficient to convict the accused.

4.1 He further submitted that the first respondent failed to comply the provision under Section 50 (1) of NDPS Act. The obligations of the Authorised Officer under Section 50(1) of the NDPS Act is mandatory and requires strict compliance. In this regard, he also relied upon the judgment in the case of Vijaysinh Chandubha Jadeja Vs. State of Gujarat reported in (2011) 1 SCC 609, wherein it is observed as follows:

In view of the foregoing discussion, we are of the firm opinion that the object with which right under [Section 50\(1\)](#) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of [Section 50](#) of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same

is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

4.2 He also submitted that the Authorized Officer had merely informed the petitioners that they can be searched before any Magistrate or Gazetted Officer, if so he wished, thereby the first respondent also failed to comply the procedure laid down under Section 50 of NDPS Act. As per the provision under Section 50 of NDPS Act, the accused to be searched before the Gazetted Officer or a Magistrate was not made known to him. In this regard, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Ashok Kumar Sharma Vs. State of Rajasthan reported in (2013) 2 SCC 67, wherein it is held as follows:

We are in this case concerned only with the question whether PW1, the officer who had conducted the search on the person of the appellant had followed the procedure laid down under Section 50 of the NDPS Act. On this question, there were conflicts of views by different Benches of this Court and the matter was referred to a five Judge Bench. This Court in Vijaysingh Chandubha Jadeja (supra) answered the question, stating that it is imperative on the part of the officer to apprise the person intended to be searched of his right under Section

50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate. This Court also held that it is mandatory on the part of the authorized officer to make the accused aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this mandatory provision requires strict compliance. The suspect may or may not choose to exercise the right provided to him under the said provision, but so far as the officer concerned, an obligation is cast on him under Section 50 of the NDPS Act to apprise the person of his right to be searched before a Gazetted Officer or a Magistrate.

Therefore, there is absolutely no possibility of conviction as against the petitioners. Therefore, bar under Section 37 of NDPS Act is not an impediment for the petitioners to grant bail. In this regard, he also relied upon the judgment of the Hon'ble Supreme Court of India held in the case of Sujit Tiwari Vs. State of Gujarat in Crl.A.No.1897 of 2019, as follows:

The prosecution case against Sujit Tiwari was that he was aware of what his brother, accused in NDPS case, was doing and was actively helping his brother. The Court noted that, other than a few WhatsApp messages and his own statement which he has resiled from, there is no other evidence.

4.3 He further submitted that the above points were

inadvertently failed to be placed before this Court in earlier bail petitions. Therefore, he sought for grant of bail to the petitioners.

5. Per contra, Mr.N.P.Kumar, Special Public Prosecutor for NCB cases appearing for the respondent filed counter and submitted that based on specific information, the Officers of Narcotics Control Bureau, Chennai Zonal Unit seized 62.600 kgs of Ganja concealed at Egmore Railway Station on 10.08.2019 from M.Shanmugapriya, W/o Murugan, No.109, West 4th Street, Pudukottai and M.A.Srimanikandan, S/o Ashokan No.71, Poonga Nagar, Raja Gopalpuram, Pudukottai, Tamil Nadu under a mahazar proceedings and the petitioners signed in the mahazar and on the seized property and documents. After completing the mahazar proceedings summons were served on the petitioners under Section 67 of NDPS Act, 1985, as amended respectively to appear before the Intelligence Officer at the NCB Office at Ayapakkam, Chennai on 10.08.2019 at 14.30 Hrs for further enquiry, for which they voluntarily accompanied the officer to the NCB Office at Ayapakkam, Chennai.

5.1 He further submitted that the grounds raised in the bail

petition are without any merits and the medical ground is not a ground for bail under NDPS Act that too for commercial quantity. As per Section 37 of NDPS Act, the petitioner has to be satisfied the twin condition of Section 37 of the NDPS Act, but the petitioner not satisfied the conditions hence they are not entitled for bail. The medical ground was taken by the petitioner in CrI.MP.No.982 of 2020 before the NDPS Court and the same was dismissed on 09.03.2020 with the observation that the first petitioner is entitled to avail the medical facilities available in the prison and further treatment at any Government Hospital based on the reference or recommendations of the Medical Officer attached with Central Prison for Women. Further, she admitted that she was taken to Stanley Government Hospital on 19.10.2019 and after treatment she was discharged on 24.10.2019 hence the ground for medical treatment is without any merits and the prison authority are taking care of her, hence the petition is liable to be dismissed.

5.2 He further submitted that the earlier bail petitions filed by the petitioners vide CrI.OP.No.6676 of 2020 and CrI.OP.No.7747 of 2020 were dismissed on merits and there is no change of circumstance to file this petition. Further, both the accused were enquired whether they are in possession of any narcotic drug for which they answered affirmatively, then the provisions of

Section 50 of NDPS Act, 1985 was informed to them in Tamil and both Shanmuga Priya and Srimanikandan C. that they have the right to be searched before a Magistrate or a Gazetted Officer for which both of them declined politely and said that the search may be conducted by the NCB Officers present there. Then seizure was effected in presence of two independent witnesses and a female officer and on the spot as per Mahazar. Further it is also clearly mentioned in the Mahazar that the team had a female officer throughout the search and seizure procedure. Hence, provisions of Section 50 of NDPS Act was followed properly. As such, he prayed for dismissal of the bail petitions.

6. Heard, Mr.D.Selvam, the learned counsel for the petitioners and Mr.N.P.Kumar, Special Public Prosecutor for NCB cases appearing for the respondent.

7. The petitioners are arrayed as A1 and A2. The first respondent seized contraband weighing 62.600 kgs of ganja on 10.08.2019 under mahazar proceedings. Thereafter, their voluntary statements were recorded under Section 67 of NDPS Act. Accordingly, they admitted their

possession of the contraband and admitted transporting the same. Thereafter the first respondent registered case and after completion of investigation filed final report, and the same has been taken cognizance in CC.No.17 of 2020 on the file of the Special Court for NDPS Act cases, Chennai and it is pending for trial. All the grounds raised by the petitioners and the judgments cited by the learned counsel for the petitioners are arising out of appeals after conviction. Therefore, the above judgments are not helpful to the case of the petitioners. Further, this Court already considered the above points and dismissed their bail petitions on two occasions. Therefore, there is absolutely no change in circumstances to consider these petitions. Further, the possession of the contraband is commercial quantity and there is bar under Section 37 of NDPS Act in considering the bail petitions. Therefore, this Court is not inclined to entertain these petitions.

8.Accordingly, these Criminal Original Petitions are dismissed.

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Internet : Yes / No

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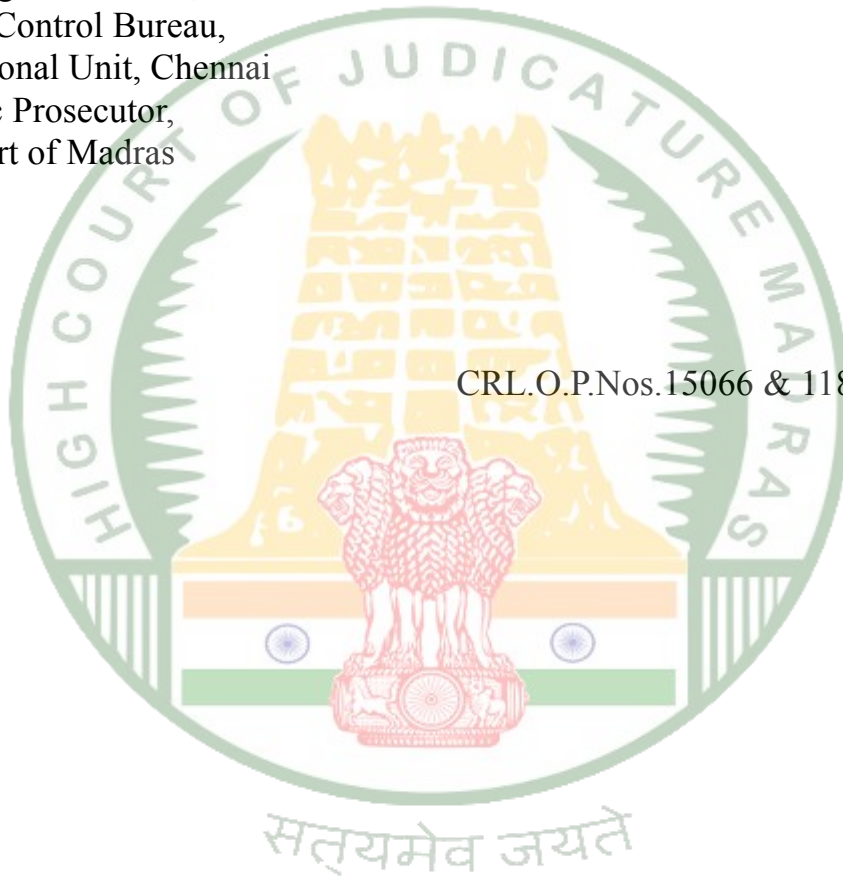
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G.K.ILANTHIRAIYAN, J.

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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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