



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

Date : 13/02/2020

PRESENT

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

CRL OP(MD). No.2567 of 2020

R.Srinivasan

... Petitioner/8th Accused

Vs

The State rep.by
The Inspector of Police,
NIBCID Police Station,
Ramnad, Ramanthapuram District.
Crime No.58 of 2019.

... Respondent/Complainant

For Petitioner : M/s.T.Balakumaran,
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.58 of 2019 on the file of the Respondent Police

ORDER : The Court made the following order :-

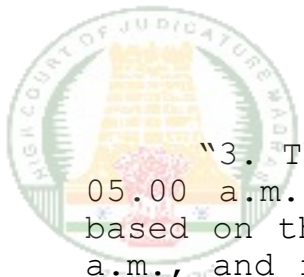
Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner is in custody since 26.12.2019, for the offences under Section 8(c) r/w. 20(b)(ii)(C), 25, 27A and 29(c) of Narcotic Drug Psychotropic Substance Act, 1985, in Crime No.58 of 2019, on the file of the respondent police. Hence, he seeks bail.

3. In this case 80 kgs of ganja were seized from the accused.

4. The petitioner therefore has to satisfy the twin tests laid in Section 37 of NDPS Act.

5. The learned counsel appearing for the petitioner pointed out that I had granted bail to A7/Banumathi vide order dated 06.02.2020 in Crl.O.P.(MD)No.1364 of 2020. Bail was granted to the said Banumathi by giving the following reasons :-

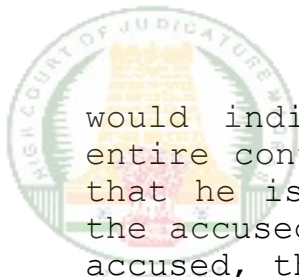


"3. The case of the prosecution is that on 25.12.2019 at about 05.00 a.m., the respondent police received secret information and based on the same, they intercepted a moving vehicle at about 07.15 a.m., and found that the six named accused were in possession of 30 kgs of ganja. Based on their confession, the police raided the house of the petitioner and seized 20 kgs of ganja from her. All the accused were arrested and based on the confession of A1, 10 more kgs of ganja were seized from one Seenivasan at about 06.30 p.m. All the eight accused were brought to the occurrence spot and a case was registered at about 08.30 p.m.

4. The petitioner of course has to satisfy the twin test set out in Section 37 of NDPS Act. The respondent has also filed her counter affidavit. It is not in dispute that the petitioner is a lady aged about 57 years and she is not having any previous case. Therefore, there is no difficulty in rendering a finding regarding the second test laid down in Section 37 of NDPS Act in favour of the petitioner. As regards the first test, the petitioner's counsel points out that in various newspapers published on 26.12.2019, it was reported that the Superintendent of Police received a secret information and that he formed a special team and they intercepted a vehicle in Sivagami Nagar and seized 39 bags of ganja totally weighing 80 kgs. A1 to A6 were apprehended and arrested on the spot. In fact press conference was also conducted and photographs showing the Superintendent of Police inspecting the samples was also prominently published. The petitioner's counsel also produced the original newspaper report. From this one can safely infer that the local police had arrested A1 to A6 and recovered 80 kgs of ganja from them. The 80 kgs of ganja were found in 39 bags. Since the respondent police is the jurisdictional investigating agency, the respondent was thereafter directed to register an FIR and proceed further in the matter. Instead of taking over the investigation from that stage, the respondent appears to have come out with a new version. From the materials placed before me, I can safely conclude that there was no raid on the petitioner's house or any recovery of contraband weighing 20 kgs from the petitioner. Prima facie, it is seen that the petitioner is not likely to have committed the offence in question."

6. The petitioner's counsel would point out that the petitioner/Srinivasan is placed on the same footing and that therefore, he also deserves to be granted bail. He further contended that the petitioner is not having any previous case.

7. I am unable to agree with the said submission of the petitioner's counsel. As rightly pointed by the learned Government Advocate (Crl. Side), if the prosecution case against the petitioner is only based on recovery of 10 kgs of ganja then certainly the petitioner also deserves to be granted bail as in the case of Seenu that is not so. A reading of the confession of A2



would indicate that it was the petitioner who had supplied the entire contraband. Of course, the petitioner's counsel would state that he is not the supplier and that he merely accompanied one of the accused and that in any event based on the confession of the co-accused, the petitioner cannot be detained.

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8. If as contended by the petitioner's counsel, the only material against the petitioner is the confession of the co-accused then certainly the petitioner will be granted bail. To enable this Court to do so, the petitioner will have to necessarily wait till the final report is filed. As already pointed out that the case of the prosecution against the petitioner is resting on two limbs (a) recovery of 10 kgs (b) he is a supplier.

9. I disbelieve the story of recovery of 10 kgs. But then I cannot straightaway reject the prosecution case that the petitioner is supplier. Of course the petitioner's counsel would place reliance on the newspaper report and alleged that even according to the Superintendent of Police who originally arrested the accused it was A9 who was the supplier. But this contention cannot be gone into at this stage. Investigation is still pending. Three of the accused are still absconding. Therefore, the petitioner will have to necessarily wait till the final report is filed. Therefore, this criminal original petition is dismissed for the present.

sd/-
13/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE INSPECTOR OF POLICE,
NIBCID POLICE STATION,
RAMNAD, RAMANTHAPURAM DISTRICT.
2. THE OFFICER INCHARGE,
DISTRICT JAIL, RAMANATHAPURAM.
3. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.T.BALAKUMARAN Advocate SR.No.3051

ORDER
IN
CRL OP(MD) No.2567 of 2020
Date :13/02/2020

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<https://hccsrecords.org/Record/2020/3P/5C>