



WEB COPY

CRL OP(MD). No.5081 of 2020

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

Reserved on	12.08.2020
Delivered on	19.08.2020

PRESENT

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
CRL.O.P. (MD) . No.5081 of 2020

1.Satheeskumar,
S/o.Nagaraj,
Thevar Thirunagar,
Nellur Village,
Athoor Taluk,
Dindigul District.

2.Balamurugan,
S/o.Maruthupandi,
13-3-54, Subramani Pillai Street,
M.Vadipatti,
Nilakottai Taluk,
Dindigul District.

3.Jeganathan,
S/o.Nagaraj,
Mela Theru,
M.Vadipatti,
Nilakottai Taluk,
Dindigul District.

: Petitioners/Accused Nos.1 to 3

Vs.

The State Rep. by its,
The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
(Crime No.276 of 2019).

: Respondent/Complainant

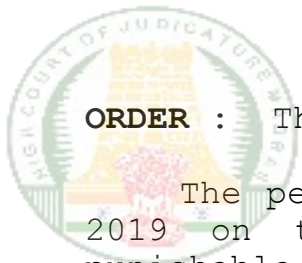
For Petitioners : Mr.M.Jegadeesh Pandian
Advocate.

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

PETITION FOR BAIL UNDER SECTION 439 OF THE CODE OF CRIMINAL
PROCEDURE.

PRAYER :-For Bail in Crime No.276 of 2019 on the file of the
respondent police.

<https://hcservices.ecourts.gov.in/hcservices/>



ORDER : The Court made the following order :-

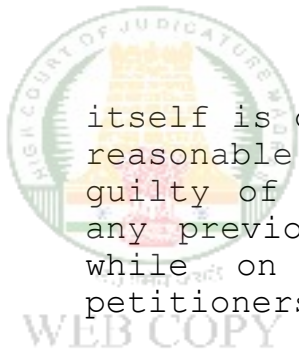
The petitioners, who are Accused Nos.1 to 3 in Crime No.276 of 2019 on the file of the respondent police for the offences punishable under Sections 8(c) and 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, were arrested and remanded to judicial custody on 29.07.2019, and seeking bail, the present petition has been filed.

2. The case of the prosecution, in brief, is that on 29.07.2019, on a secret information about the illegal transportation of Ganja, the respondent police, after informing the same to the higher officials and after obtaining necessary permission, went to the scene of occurrence at M.Vadipatti Village. At that time, on seeing the police party, all the accused persons tried to escape from the place. However, the respondent police secured all the three petitioners herein and the fourth accused escaped from the scene of occurrence. The respondent police informed the petitioners that they were about to search them and also informed them about their right to be searched before the learned Magistrate or a Gazetted Officer under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as 'the NDPS Act']. The petitioners have given their consent about the search by the respondent police and they also voluntarily handed over two gunny bags containing Ganja weighing 15 Kilograms each from the house. Thereafter, completing all the other formalities, the petitioners were remanded to judicial custody on the very same day. Now, seeking bail, the present petition has been filed under Section 439 of the Code of Criminal Procedure.

3. The learned counsel appearing for the petitioners would submit that the respondent police has failed to follow the procedures contemplated under Section 50 of the NDPS Act. That apart, the arrest intimation form and notice under Section 52 of the NDPS Act are all in a computer typed format, which clearly shows that all those forms were not prepared in the scene of occurrence and subsequently, prepared at the police station, which clearly vitiates the arrest, seizure and recovery by the respondent.

4. The learned counsel would further submit that the co-accused, namely the fourth accused approached this Court seeking anticipatory bail, wherein, this Court, holding that recovery was doubtful and considering the facts referred to above, granted anticipatory bail in CrI.O.P.(MD)No.13904 of 2019, dated 01.10.2019. Now, the petitioners' counsel claiming parity seeks bail on the very same ground.

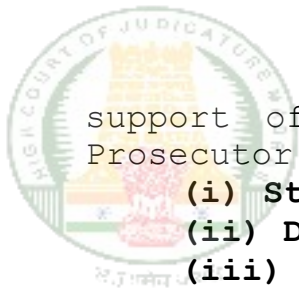
5. That apart, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in **State of Rajasthan v. Parmanand** reported in **2014 (5) SCC 345** and contended that when the recovery



itself is doubtful, the entire trial will be vitiated and there is a reasonable ground available to find that the petitioners are not guilty of any offence. That apart, the petitioners are not having any previous case and they are not likely to commit any offence while on bail. Contending so, the learned counsel for the petitioners prays for bail in favour of the petitioners.

6. The respondent filed a counter-affidavit stating that on a secret information regarding illegal transportation of Ganja, after informing the same to the higher officials and getting permission, the respondent police went to M.Vadipatti Village and all the accused, after seeing the police, were trying to escape from the place. However, the respondent police secured the petitioners herein and on enquiry, they voluntarily produced two white colour gunny bags containing Ganja weighing 15 Kilograms each and they have also followed all the legal requirements and remanded the petitioners to judicial custody. The seized materials were also produced before the learned Judicial Magistrate, Nilakkottai. It is further stated that the petitioners are the habitual offenders and they were also detained under the Tamil Nadu Act 14 of 1982 on 28.08.2019, the investigation in this crime has been completed and final report has also been filed before the Court concerned on 02.10.2019. Now, it is also stated that the Court concerned has taken cognizance of the offence in C.C.No.27 of 2020.

7. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent police would vehemently oppose the bail application stating that absolutely there is no violation of any mandatory provision, as alleged by the petitioners. He would further state that search was conducted in the house of the fourth accused and illicit materials were recovered, where all the petitioners were also available at that time and nothing was recovered personally from the petitioners and no personal search was conducted on the petitioners. Hence, Section 50 of the NDPS Act has no application in this case. It is also an admitted fact that the contrabands were recovered from the premises of the fourth accused. Even assuming that there is a violation of Section 50, it is only applicable to the recovery of illicit article from the personal search and there is no implication in the recovery from the premises, and Section 50 of the NDPS Act will not apply. The learned Additional Public Prosecutor also would submit that the petitioners cannot seek parity in granting bail and the petitioners cannot claim any advantage on the order granting anticipatory bail to the fourth accused, wherein, this Court has granted anticipatory bail only on the ground that the documents could not be prepared at the time of search, seizure and recovery and doubting the same, granted anticipatory bail. Whether the documents have been prepared at the scene of occurrence or at the police station is a matter to be decided in the trial. It is also very much possible that the documents can be prepared in the scene of occurrence with mobile electronic equipments and without same, anticipatory bail has been granted. In



support of the above submissions, the learned Additional Public Prosecutor has relied upon the following judgments:

- (i) **State of H.P. vs. Pawan Kumar [2005(4) SCC 350];**
- (ii) **Dehal Singh v. State of H.P. [2010(9) SCC 85];**
- (iii) **Neeru Yadav v. State of U.P. [2014(16) SCC 508];**
- (iv) **Raju v. State of W.B. [2018(9) SCC 708]; and**
- (v) **State of Punjab v. Baljinder Singh [2019(10) SCC 473].**

8. I have considered the rival submissions.

9. Section 37 of the NDPS Act makes an offence under the Act cognizable and also non-bailable, and imposes a limitation on granting bail in addition to the limitations provided under the Code of Criminal Procedure, and the Court cannot grant bail, unless it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.

10. At this juncture, it is useful to refer to Section 37 of the NDPS Act, which reads as follows:

"37. Offences to be cognizable and non-bailable. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

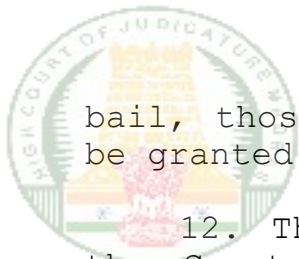
(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973(2 of 1974), or any other law for the time being in force, on granting of bail."

11. A cursory reading of the above provision makes it clear that granting of bail is not only subject to the limitation contained under Section 439 of the Code of Criminal Procedure but also subject to the limitation prescribed under Section 37 of the NDPS Act. When a special statute, like the NDPS Act, contained specific provision for dealing with the application for grant of



bail, those provisions should be strictly followed and bail cannot be granted without satisfying the conditions imposed therein.

12. The first condition prescribed under Section 37 is that, the Court should satisfy that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. Even though the word "**reasonable ground**" has not been defined in the Act, it is now settled by a *catena* of judgments of the Hon'ble Supreme Court that, the reasonable grounds mean something more than *prima facie* grounds and it signifies a substantial probable cause for believing that the accused is not guilty of the offence. The existence of such facts and circumstances are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

13. Recently, the Hon'ble Supreme Court in **State of Kerala v. Rajesh** [2020 SCC OnLine SC 81], has held as follows:

"21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

14. While considering the application for bail, the Court is not expected to give a finding that the accused is not guilty of the offence, and at this stage, the Court cannot weigh the evidence meticulously to arrive at a finding as to whether the accused has committed the offence under the Act or not, and the Court only has to see whether there is a reasonable ground for believing that the accused is not guilty of the offence and he is not likely to commit the offence under the said Act while on bail.

15. The Hon'ble Supreme Court in **Union of India v. Shiv Shanker Kesari** [2007(7) SCC 798], has held as follows:

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the



court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

16. Insofar as the violation of Section 50 of the NDPS Act is concerned, it is also now well settled that Section 50 of the NDPS Act is applicable only in cases of personal search of a person, and that Section is not applicable nor attracted where no personal search was involved and search and recovery were made from a bag, vehicle or premises, etc.

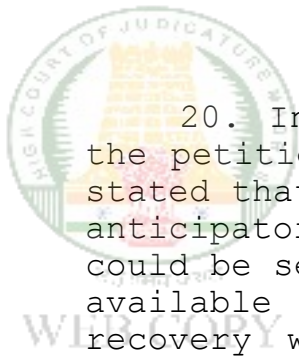
17. A Constitution Bench of the Hon'ble Supreme Court in **State of Punjab v. Baldev Singh** [1999(6) SCC 172] has held as follows:

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

18. The above judgment has been subsequently followed in number of cases and recently in **State of Punjab v. Baljinder Singh** reported in 2019(10) SCC 473, wherein the Hon'ble Apex Court, after referring to number of other judgments, has held as follows:

"15. As regards applicability of the requirements under Section 50 of the Act is concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises."

19. In the instant case, admittedly, the contrabands were recovered from the house and nothing was recovered personally from the petitioners and there is also no material available on record to show that any personal search was made on the petitioners. Even assuming any personal search was made on the petitioners in violation of Section 50, it will only vitiate so far as the recovery of the illicit article from the person concerned and it is not affected the recovery made from the premises. In the said circumstances, the petitioners cannot contend that there is a violation of Section 50 of the NDPS Act and seek bail on that ground.



20. Insofar as the next contention of the learned counsel for the petitioners seeking parity in granting bail is concerned, it is stated that the fourth accused in this case has already been granted anticipatory bail by this Court. From the perusal of records, it could be seen that at the time of search, the fourth accused was not available in the scene of occurrence and she had escaped and recovery was made from her premises, only the petitioners were available in the premises at the time of recovery.

21. It is settled that there cannot be any parity in seeking bail and each case has to be decided on its own merit based on the nature of overt act attributed to the accused, antecedents of the accused and also strict application of the conditions imposed under Section 37 of the NDPS Act. Merely because the co-accused was released on anticipatory bail, the Court cannot automatically grant bail to the remaining accused. Further, the co-accused was released on anticipatory bail doubting the recovery on the ground that the arrest memo and intimation under Section 52 of the NDPS Act are all in a computer typed format and further doubting that the above forms could not be prepared at the scene of occurrence and it might have been prepared at the police station. As rightly contended by the learned Additional Public Prosecutor, whether forms have been prepared at the time of arrest in the scene of occurrence or subsequently prepared at the police station is a matter to be decided in the trial on evidence, and the Court cannot presume at this stage that those forms were prepared in the police station. That apart, seizure of illicit materials was made in their presence. As already held, since recovery was made from the premises, Section 50 of the NDPS Act is not applicable in this case, consequently, preparation of the above said forms has no consequence. Thus, the submission of the petitioners seeking parity cannot be countenanced.

22. In view of the foregoing reasons, this Court finds no reason to believe that the petitioners are not guilty of offences and if they are released on bail, they would not likely to commit any offence while on bail. Thus, this Court is not inclined to grant bail to the petitioners herein and hence, this petition seeking bail stands dismissed.

Sd/-

Assistant Registrar (Records)

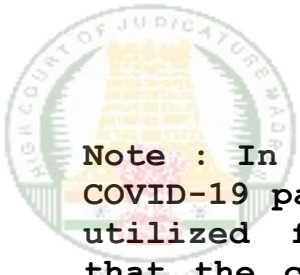
// True Copy //

/ /2020

Sub Assistant Registrar (CS)

SML

<https://hcservices.ecourts.gov.in/hcservices/>



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District Judge/Presiding Officer,
Principal Special Court for E.C & NDPS Act Cases, Madurai.
- 2.The Superintendent,
Central Prison,
Madurai.
- 3.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.O.P. (MD) . No.5081 of 2020
Delivered on:
19.08.2020

AP(31/08/2020) 8P 5C