



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

Date : 12/10/2020

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD) . Nos.5897 and 5900 of 2020

Kasipandi ... Petitioner/Accused No.3
CRL OP(MD) . No.5897 of 2020

Dharmapandi ... Petitioner/Accused No.2
CRL OP(MD) . No.5900 of 2020

Vs

State Rep. by
The Inspector of Police,
Sedapatty Police Station,
Madurai District
(Crime.No. 85 of 2018).

... Respondent/Respondent
in both the petitions

IN BOTH THE PETITIONS:

For Petitioners : M/s.R.Anand,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

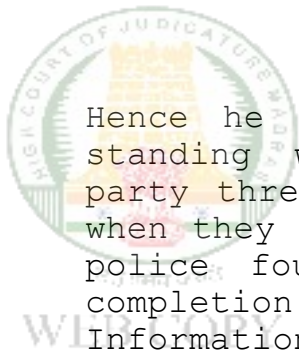
COMMON PRAYER :-

For Bail in Crime. No. 85 of 2018 on the file of the Respondent Police

COMMON ORDER : The Court made the following order :-

The petitioners/A2 and A3, who were arrested and remanded to judicial custody on 08.03.2020 and 18.04.2020 for the offences punishable under Sections 8(c)r/w.20(b)(ii)(C) and NDPS Act on the file of the respondent police seeks bail.

2. The case of the prosecution is that on 27.04.2018 the respondent police received an information about smuggling of Ganja.

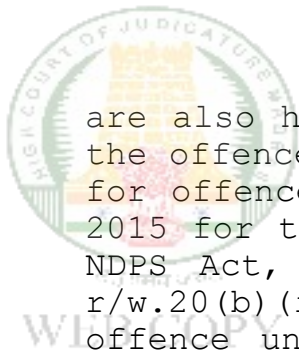


Hence he immediately rushed to the spot and found five persons standing with two gunny bags in 2 two wheeler. On seeing the police party three of them fled away from the spot, A4 and A5 apprehended when they tried to escape through their two wheeler. The respondent police found 78 kilograms of Kanja in two gunny bags. After completion of formalities the respondent police registered the First Information Report.

3. The learned counsel for the petitioners would submit that the respondent police ought to have followed the procedure laid down under Section 50 of the NDPS Act, thereby the search to be made in the presence of the Executive Magistrate or Gazetted Officer. He would also submit that the name of the petitioners herein have been included based on the statement given by A4 and A5. He would also submit that co-accused in this case were granted bail by the Sessions Court. He further submitted that the petitioners were in jail for more than seven months, hence they may be granted bail.

4. The learned Government Advocate(Crl.Side) filed a counter and stated that there are five accused in this case and the petitioners herein are arrayed as A2 and A3. He would also submit that the petitioners were found in possession of 78 kg of Kanja, which comes under the commercial quantity. He further submitted that the respondent police followed the mandatory procedure under Sections 42,50,52A and 57 of the NDPS Act, If the mandatory procedures are not complied with it is a matter for trial and it cannot be considered by this Court that too in the bail petition. Further the petitioners are having bad antecedent of three previous cases. That apart the petitioners were found in possession of Kanja which falls within the commercial quantity and as such there is no bar under Section 37 of the NDPS Act and does they are not entitled for bail and prayed for dismissal of the petition.

5. It is seen that there are five accused in this case and the petitioners herein is arrayed as A2 and A3. On secret information on 27.04.2018 the respondent police found the accused persons in possession of 78 kg of Kanja in two gunny bags. The only ground raised by the petitioners is that the respondent police did not follow the procedure laid down under Section 50 of the NDPS Act. On perusal of the counter filed by the respondent police it is seen that on receipt of secret information they found the accused in possession of kanja weighing 78 kgs. Immediately they were informed about their right under Section 50 of the NDPS Act for which they consented for search by the police party and to that effect consent letter was also obtained from them. That apart the respondent police also followed all mandatory procedures laid down under Sections 42,50,52A and 57 of the NDPS Act. Further the contraband possessed by the petitioner falls under commercial quantity. In the light of Section 37 of the NDPS Act, if the petitioners fail to satisfy the twin test as contemplated under Section 37 of the NDPS Act, the petitioners are not entitled for bail. That apart the petitioners



are also having three previous cases in Crime Nos.883 of 2008 for the offences under Sections 294(b), 324 of IPC, Crime No.301 of 2012 for offences under Sections 294(b), 324,307 of IPC, Crime No. 57 of 2015 for the offence under Sections 8(c) r/w.20(b)(ii)(C) and 25 of NDPS Act, Crime No.111 of 2013 for offence under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act and Crime No. 203 of 2013 for the offence under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act on the file of the Sedapatti Police Station, Madurai District, hence this Court is not inclined to grant bail to the petitioners.

6. Hence these petitions stands dismissed.

sd/-
12/10/2020

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

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 INSPECTOR OF POLICE,
SEDAPATTY POLICE STATION,
MADURAI DISTRICT.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD). Nos.5897
and 5900 of 2020
Date :12/10/2020

AAV
JM/AKM/SAR IV/22.10.2020/3P/4C