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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 30/06/2020

Pronounced on : 03/07/2020

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD)No.6160 of 2020

Karpagamani,

... Petitioner/Accused-3

Vs

State rep.by
The Inspector of Police,
Kodaikkanal Police Station,
Dindigul District.
(Crime No.43 of 2020)

... Respondent/Complainant

For Petitioner : Mr.R.Shanmugasundaram
Senior Counsel
for Mr.S.Ravi

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

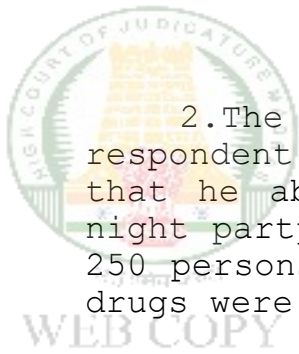
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.43 of 2020 on the file of the respondent police.

ORDER : The Court made the following order:-

This Petition for bail filed by the third accused in Crime No.43 of 2020, on the file of the respondent police for the alleged offences punishable under Sections 8(c), 20(b)(ii)(A) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [in short 'the NDPS Act'], Section 3-A of the Tamil Nadu Town Nuisance Act and Section 109 of I.P.C.



2.The case of the petitioner is that, on 07.02.2020 the respondent Police came to his farm house and arrested him alleging that he abetted the other accused persons to conduct the musical night party in the vacant space of his farm house, in which, nearly 250 persons participated. In the said party, drinks and prohibited drugs were supplied.

3.The petitioner would submit that he leased out the vacant land to one S.R.Harish Kumar, who is arrayed as first accused in this case, to conduct musical night and in the agreement, he specifically agreed not to do any illegal act. While so, the petitioner has been arrested without any material to implicate him in the said crime. Being an income tax assessee and Proprietor of a Garment Manufacturing Unit, he let out his agricultural land, which was not yielding sufficient income. For the act of let out his land, the petitioner cannot be held criminally responsible for the act of his lessee. Even according to the prosecution, the petitioner was not in possession of any Narcotic Drugs and Psychotropic Substances. As per the F.I.R., the only allegation levelled against the petitioner is that he leased out the premises to conduct musical night without permission, for obtaining excess gain.

4.The learned Senior Counsel appearing for the petitioner would submit that the petitioner had no privy to the alleged crime. When Accused Nos.1 and 2 sought his vacant land for conducting musical night, he leased out the same for a rent of Rs.20,000/- and to that effect, an agreement was duly executed in a Stamp Paper, wherein Accused Nos.1 and 2 have specifically agreed not to carry on any illegal activities in the said land. The petitioner had no culpable mental state in the said crime and he had not possessed any prohibited drugs. Merely, based on the confession statement of the co-accused, the petitioner is incarcerated for the past 120 days.

5.The learned Senior Counsel appearing for the petitioner would rely upon the following judgments to buttress his submissions:-

- (i) **Union of India Vs. Bal Mukund and others** reported in **2009 (12) SCC 161**
- (ii) **Vijay Jain Vs. State of Madhya Pradesh** reported in **2013 (14) SCC 527**
- (iii) **Baldev Singh Vs. State of Haryana** reported in **2015 (17) SCC 554**
- (iv) **Kumar @ Ranjithkumar vs. State, Rep. by Inspector of Police, D1-Ramanathapuram Police Station, Coimbatore District** reported in **2019 (2) MWN (Cr.) 242.**

6.The learned Additional Public Prosecutor appearing for the respondent filed counter affidavit, wherein the case of the prosecution has been narrated in the following words:-



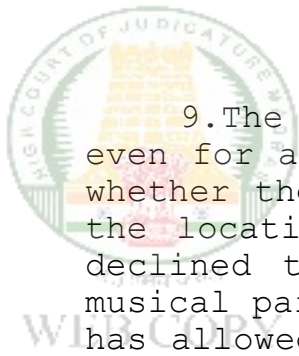
''3. the prosecution case is that on 06.02.2020, one Thiru Madasamy, Inspector of Police, Silaiman Police Station, Madurai District filed a special report that on the instruction of the Inspector General of Police, South Zone and on the direct supervision of Thiru Karthikeyan, the Deputy Superintendent of Police, Manamadurai, he along with Tmt. Sumathi, the Inspector of Police, Oomachikulam Police Station and police party went to Kookal village, Kodaikaal Taluk and inspected the vacant land belonging to one Karpagamani, KG Farms and found that a musical programme was organized from 6 AM on 07.02.2020 amidst thickly grown forest land without permission where about 250 persons have participated. They were using banned intoxicating substances and on seeing the police party, they attempted to flee from the scene of crime, remaining people were gathered and it was found that they were from Kerala, Andhra, Karnataka states as well as from Chennai, Tiruchy, Dindigul, Coimbatore from Madurai district and also persons from abroad. Enquiry disclosed that the said event was organized by one Tharunkumar, S/o Sadasivam, Rasakkapatti, Dindigul District and Harishkumar, S/o Rajendran, Dindigul. Since there were banned NDPS substances involved as per the information provided by the informant, all the mandatory provisions of NDPS Act was strictly followed in the searches made thereon. The accused produced a blue coloured shoulder bag wherein LSD stamps in 8 small polythene strip pouches and 4 diamond shaped LSD stamps and 150 gram of Ganja, 1 ¼ feet small glass jar, silver colour top of 10 cm; 6 strips with Frequency Crew presents MARAMBA Kodaikanal - 06.02.2020, entry cards from Sl.Nos. 326 to 350; 5 black coloured pockets for smoking Ganja subscribed with OCB Slim Premium; water bottles, snack and tokens for selling snacks, Lenovo Laptop model 81 MT, mobile phones with sim cards. The above properties were seized under a cover of seizure mahazar duly authenticated by witnesses. The said special report was reduced into First Information Report in Crime No. 43/2020 under section 8 (c) r/w 20(b)(ii)(A), 22 (c) NDPS Act, 3(A) TN Nuisance Act and 109 IPC on 07.02.2020 at 11. Hours. Immediate investigation was taken up. The accused Harishkumar was arrested on 07.02.2020. He tendered confession which was recorded in the presence of independent witnesses and in furtherance of the confession, case properties were seized. Tvl. Dharunkumar, Harishkumar and Karpagamani, the Petitioner herein arrested and sent for remand. The rental



agreement entered by Dharunkumar and Harishkumar with the Petitioner, Karpagamani was also seized. The seized NDPS substances were produced before the Learned Special Court for NDPS Act cases, Madurai and the stamps were forwarded to the Director, Forensic Science Laboratory, Chennai and Ganja pockets were sent to the Regional Forensic Science Lab, Madurai, for chemical analysis. The Deputy Director, Regional Forensic Science Lab, Madurai, who examined the Ganja pockets has certified vide his report in PP No. 166/2020 dated 08.05.2020 that the contents contained Ganja. The Deputy Director, Forensic Science Lab, Chennai who examined the contents of 8 stamps has certified vide NAR-150/2020 dated 22.05.2020 that the in the sample Lysergide (LSD) was detected in all 8 stamps. Reports relating to the remaining 4 stamps are pending and that on receiving the same, final report will be filed before the Learned Additional District Judge and Special Court for EC and NDPS Act cases, Madurai.''

7. According to the learned Additional Public Prosecutor, based on the information, a team was constituted by the Inspector General of Police, South Zone, consisting of Police Officials from various Districts and the farm house of the petitioner was raided on 07.02.2020. Nearly 250 persons from various parts of the State as well as from Foreign Countries were present and on seeing the Police Party, they started fleeing from the scene of occurrence. 150 Grams of Ganja, 2 Smoking Pipes, 12 LSD Stamps [Lysergide Psychotropic Substance], printed tokens for sale of snacks, printed Admit Cards and Lenovo Laptop were seized. One Dharun Kumar, Organizer and Karpagamani, the land owner, who is the petitioner herein, were arrested. On the same day, S.R. Harish Kumar, the other Organizer, who fled away from the scene of occurrence on seeing the Police, was apprehended. The investigation revealed that S.R. Harish Kumar and Dharun Kumar/A1 and A2 have organized the musical night party without permission of the police. They have sold tickets through online, procured Ganja and LSD Stamps for serving it in the party. Under the guise of musical night, banned contraband, like Ganja and LSD Stamps, were served to the participants. The petitioner was present in the scene of occurrence and was aware of the activities of the other accused. The confession statement of the accused persons disclose the overt-act of each other accused persons and there are materials to show that the petitioner has let out his land for such musical party for excess gain.

8. The learned Additional Public Prosecutor appearing for the respondent would further submit that the petitioner herein though claims to be innocent, there are materials to show that the musical party was organized illegally with his knowledge and consent.

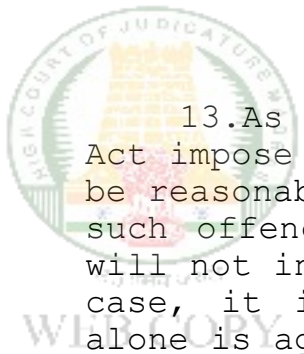


9.The learned Additional Public Prosecutor would emphasize that even for a lawful musical party, the petitioner should have ensured whether the Organizer has obtained police permission or not. Since the location is very near to the Reserve Forest, the Police have declined to give permission to the Organizers for conducting the musical party. Despite refusal of permission, the petitioner herein has allowed the Organizers to conduct musical party in his land and he was very well present in his Farm during the event. Since he was overseeing the distribution and serving of contraband to the participants, he cannot be presumed to be innocent.

10.Considering the gravity of the crime alleged against the petitioner, this Court called for case diary from the respondent Police and the same was perused.

11.The specific allegation against this petitioner is that he abetted the crime by letting out his land for conducting musical night, in which, Narcotic Drugs and Psychotropic Substances were served to the participants. While the petitioner admits that he let out his land for the musical night party, he denies his knowledge about serving of Narcotic Drugs and Psychotropic Substances to the participants. Whereas the prosecution states that the petitioner had knowledge about serving of Narcotic Drugs and Psychotropic Substances in the musical night party to the participants and he was present in the scene of occurrence. The very conduct of musical night near the foothills of Kodaikanal Reserve Forest without permission is *per se* an act of illegality. In addition, distribution of Narcotic Drugs and Psychotropic Substances to the participants is a grave offence. The prosecution has seized the printed entry passes, printed tokens along with LSD Stamps, Ganja, OCB Slim Premium to roll the Ganja leaves and a Lenovo Laptop used to sell tickets through online. The conduct of musical night is *prima facie* proved from the materials seized. The innocence of the petitioner/landlord could not be presumed, since he was very well present at the scene of occurrence and he has entered into an agreement with the Organizers. The written agreement has been seized by the respondent police and part of documents relied by the prosecution.

12.As far as the confession statement of the co-accused is concerned, the learned Additional Public Prosecutor referring the judgment of this Court rendered in **Kumar @ Ranjith Kumar Vs. State** reported in **2019 (2) MWN (Cr.) 242**, wherein it is observed by the learned Judge in a bail petition that confession statement of the co-accused cannot be treated as substantive evidence as against the other accused, would submit that this is not the stage to discard the statement of the co-accused. Such conclusion can be arrived only after investigation is completed and the confession statement of the co-accused put to test. Any inculpatory statement of the co-accused is a piece of evidence, which can be relevant under Section 30 of the Indian Evidence Act.



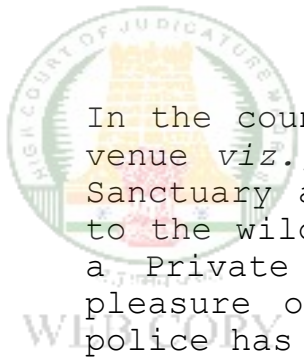
13.As far as the NDPS Act is concerned, Section 37 of the said Act impose twin conditions while granting bail. Firstly, there must be reasonable grounds for believing that the person is not guilty of such offence. Secondly, the Court should believe that the person will not indulge in similar offence while on bail. More so, in this case, it is not only the confession statement of the co-accused alone is against the petitioner, also his own conduct of letting out his land for the illegal musical party and his presence in the scene of occurrence stands incriminating him. In addition, the investigation in this case is yet to be completed. Since the accused persons have confessed to the police that they sold tickets through online, the Lenovo Laptop seized from the accused persons has to be examined.

14.On perusing the C.D. File, this Court finds that S.R.Harish Kumar, co-accused in this case, has approached this Court by way of W.P.(MD)No.1002 of 2020, in the month of January 2020, seeking for issuance of a Writ of Mandamus, directing the respondents therein to consider his representation dated 08.01.2020 and give adequate police protection for the Frequency Crew's Musical Night in the name of ''Kodai Music Festive'', scheduled to be held at ''G.K.Farms'' Resorts, situated at Kookkal, Kodaikanal, Dindigul District, from 06.00 p.m. on 06.02.2020 upto 09.00 a.m. on 07.02.2020. In the Affidavit filed in support of the said Writ Petition, S.R.Harish Kumar has stated as below:-

''5.I respectfully submit that now we have booked G.K. Farms which is a private resort situated at Kookkal, Kodaikanal, Dindigul District, for conduction of musical night and we have named the musical concert as ''Kodai Music Festive'' and it is scheduled to be conducted from 06.00 p.m. on 06.02.2020 to 09.00 a.m. on 07.02.2020 and I have been selected as the Organiser for the said ''Kodai Music Festive'' Programme by the Frequency Crew Group Members.

8.I respectfully submit that I further undertakes to abide the law of our country and we will not consume any drugs and we will not sing, recite any songs affecting the law and order issue or touching or affecting any religious or caste discrimination in whatsoever manner and we will extend our fullest cooperation to maintain the law and order in the locality and since we are in expectation of arrival of musicians from various parts of our country and a Brazilian Musician namely ''Maramba'' and the said ''Maramba'' is a World famous musician who is having Programmes in Chennai, Bangalore etc. in the month of February.''

15.The respondent police has filed counter affidavit in the said Writ Petition setting out the reason why they have not granted



In the counter affidavit, the respondent police has stated that the venue viz., G.K. Farms Resorts is near to Aanaimalai Tiger Reserve Sanctuary and any musical event take place, it will cause distress to the wild animals and hence, police protection cannot be given to a Private Night Music Party, which is hosted for ecstasy and pleasure of 300 people. Further, in the counter affidavit, the police has expressed their specific apprehension that,-

'9.It is submitted that upon detail enquiry it is found that people participating in Night Parties are involving various kind of Drugs and Liquors and if any mishap happens then it would become a very bad remark on Police.'

16.The counter affidavit was filed on 28.01.2020 and pursuant to the said counter affidavit, this Court has disposed of the Writ Petition filed by S.R.Harish Kumar with the following direction:-

'5.This Court has not expressed any of its view with regard to the merits of the representation made by the petitioner. It is needless to point out that whenever a representation of this nature is made, the respondents are duty bound to consider the same in one way or the other.

6.In view of the limited prayer sought for in this writ petition and without going into the merits of the case, there shall be a direction to the respondents to consider the representation of the petitioner, dated 08.01.2020 and pass orders on its own merits and in accordance with law, on or before 04.02.2020.'

17.Under these circumstances, the musical night had been conducted in the premises of the petitioner. The filing of writ petition a month prior to the occurrence seeking police protection for the musical night to be conducted in the petitioner's premises and seizure of printed tickets and token belies the case of the petitioner that only on 06.02.2020, he entered into agreement with the Organizers, who are the prime accused.

18.On going through the provisions of the NDPS Act, it is seen that Section 2(viii-b) defines illicit trafficking, which reads as follows:-

''(viii b) ''illicit traffic'', in relation to narcotic drugs and psychotropic substances means-

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;



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(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs and psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes-

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities;''

19.As per the abovesaid definition, handling or letting out any premises for carrying on any of the activities referred to sub-clauses (i) to (iv) of Section 2(viii-b) of the NDPS Act amounts to illicit trafficking.

20.Very recently, the Hon'ble Supreme Court in **Sujit Tiwari Vs. State of Gujarat and others** reported in **AIR 2020 SC 667**, while considering a bail petition arising under the NDPS Act, had granted bail after perusing the documents relied on by the prosecution and recording the case of the appellant, who had no major role in the trafficking except sharing few WhatsApp Messages. This judgment was rendered during trial after completion of investigation.

21.The other three judgments of the Hon'ble Supreme Court cited by the learned Senior Counsel appearing for the petitioner and referred above, are the judgments rendered after trial. Insofar as the present bail petition is concerned, investigation not yet completed and we are appreciating evidence collected so far to satisfy whether there are reasonable grounds for believing that the accused is not guilty of the alleged offence.

22.The case on hand is concerned, as on date, the investigation is yet to be completed and final report not yet filed, it is ~~premature~~ for the Court to rush to a conclusion that there are



reasonable grounds for believing that the petitioner is not guilty of such offence. Hence, this Petition for bail, is dismissed.

sd/-
03/07/2020

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

ORDER
IN
CRL OP(MD) No.6160 of 2020
Date :03/07/2020

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AE/PN/SAR-II (06.07.2020) 9P 4C