



WEB COPY

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

Reserved on	08.09.2020
Delivered on	15.09.2020

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD) Nos.7145, 8312 and 8315 of 2020

1.Abdulkalam Azad

2.Abdul Wahab

... Petitioners/Accused No.2 & 4
in Crl.O.P.(MD).No.7145 of 2020

Abdul Rahim

... Petitioner/Accused No.6
in Crl.O.P.(MD).No.8312 of 2020

Ajmal Khan

... Petitioner/Accused No.5
in Crl.O.P.(MD).No.8315 of 2020

Vs

The State rep.by

The Inspector of Police,

Thiruvadanai Police Station,

Cr.No.168 of 2020.

(NIBCID Ramnad in Cr.No.17 of 2020.

... Respondent/Complainant
in Crl.O.P.(MD).No.7145 of 2020

The Inspector of Police,

NIBCID Police,

Ramanathapuram.

Crime No.17 of 2020

... Respondent / Complainant
in Crl.O.P.(MD).Nos.8312 & 8315 of 2020

For Petitioners: Mr.C.Deepak, Advocate.

in Crl.O.P.(MD).No.7145 of 2020

For Petitioner : Mr.T.Antony Arulraj, Advocate

in Crl.O.P.(MD).Nos.8312 and 8315 of 2020

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)
in all these petitions

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

PRAYER :-

For Bail in Cr.No.17 of 2020 on the file of the respondent

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



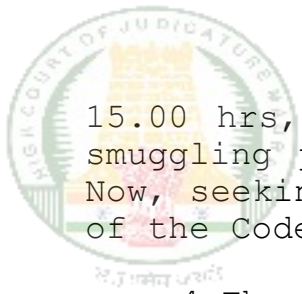
COMMON ORDER : The Court made the following order :-

Totally there are nine accused in this case, the petitioners are arrayed as A2, 4, 5, 6. The petition in Crl.O.P.(MD).No.7145 of 2020 has been filed by A2 and A4 and the petition in Crl.O.P.(MD).No.8312 of 2020 has been filed by A6 and the petition in Crl.O.P.(MD).No.8315 of 2020 has been filed by A5, seeking bail.

2.The petitioners/accused herein were arrested on 20.05.2020 for the alleged offences under Sections 34, 120B, 17(c), 22(c), 23 (c), 25 and 29(1) of Narcotic Drugs & Psychotropic Substances Act, 1985, in Crime No.17 of 2020.

3.The case of the prosecution, in brief, is that, based on a intelligent report received by the Superintendent of Police, Ramanathapuram District, that, narcotic drugs were being smuggled to Srilanka illegally via sea route, a special team was formed under the supervision of Deputy Superintendent of Police, Thiruvadanai, to keep vigil along all the coastal belts of the Ramanathapuram District. On 20.05.2020, at 18.00 hrs, the respondent police intercepted one Autorickshaw bearing Registration No.TN 63 T 9082 and one Scooty bearing Registration No.TN 63 BD 1471, and one Pulsor Motor cycle, which came in suspicious circumstances near Govindamangalam Junction Road. On seeing the police, two persons riding pulsor motor cycle fled away from the scene of occurrence. On examination, in the Autorickshaw A1, A9, A3 were sitting and the Auto was driven by A6 and they were found in possession of bags and containers etc., which they claimed to be Siddha Medicine Powders and in the scooty, A7 and A8 were found in possession of similar powder and tablets packed in gunny bags. After informing them about their right to be searched by a Judicial Magistrate or by a Gazetted Officer, all the accused voluntarily accepted for the search by the respondent Police. Thereafter, on search, the petitioners found in possession of Methaqualone Powder-4 kgs, Amphetamine Powder-1 Kg, Green coloured Heroine Stud- 555 gms, Ice Methanpletamine-24 gms, Opium Paste-14 gms, Amphetamine Powder-500 gms * 6; Amphetamine Powder-1000 gms., * 3, Molly/Mdma tablets-3 and Methaquadone Powder-004 gms, all are commercial quantity narcotic drugs. Thereafter,A5 voluntarily gave a confession stating that all the above drugs are taken for handing over it to A2, 4 and 5, who were waiting in the car bearing Registration No.TN 07 AD 2950 owned by A1, near Veerasangilimadam, in turn to transport the same to Srilanka via Thondi coast. Immediately, they were also arrested. After completing all other formalities, the petitioners were arrested and remanded to judicial custody on the very same day. During the course of investigation, it was ascertained that all the accused designed conspiracy with common intention of procuring narcotic drugs and transporting the same illegally to Srilanka through country boat owned by A3, who has also procured 36 red sanders from Chennai that

<https://hcservices.ecmets.gov.in/Hcservices/> **all were meant for smuggling to Srilanka. Thereafter, on 30.05.2020 at**



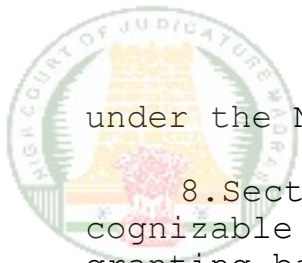
15.00 hrs, A10, 11, 12, 13, who acted in the drug procuring the smuggling process, were arrested and remanded to judicial custody. Now, seeking bail, these petitions have been filed under Section 439 of the Code of Criminal Procedure.

4.The learned counsel appearing for the petitioners submitted that the petitioners are innocent and they have been falsely implicated in this case. He further submitted that the petitioners have not involved smuggling of any contraband. He further submitted while conduct search and seizure, the respondent Police has not followed the mandatory requirements as contemplated under Sections 50 and 42 of NDPS Act. He further submitted that the petitioners are in jail for nearly 110 days and hence they may be granted bail.

5.The learned Government Advocate (Crl Side) appearing for the respondent Police vehemently opposed the bail application stating that all the petitioners involved the smuggling narcotic drugs and transporting the same to Srilanka via Thondi coast. He further submitted that on receiving secret information, all the petitioners were waylaid and search was conducted as contemplated under the NDPS Act and all mandatory requirements were also followed while conducting search and seizure. The petitioners were found in possession of Methaqualone Powder-4 kgs, Amphetamine Powder-1 Kg, Green coloured Heroine Stud- 555 gms, Ice Methamphetamine-24 gms, Opium Paste-14 gms, Amphetamine Powder-500 gms * 6; Amphetamine Powder-1000 gms., * 3, Molly/Mdma tablets-3 and Methaquadone Powder-004 gms, which are in huge quantity worth about several lakhs, which meant for smuggling to Srilanka via Thondi coast.

6.I have considered the rival submissions.

7.On perusal of the materials available on records, it is seen that, on receiving secret information, the respondent Police intercepted one Autorickshaw and one Scooty. In the Autorickshaw A1, A9, A3 were travelling and the Auto was driven by A6 and the scooty was driven by A7 and A8. The respondent Police came to know that, all the above said accused were carrying contraband to hand over the same to A2, 4 and 5 and in turn, they were planning to smuggle it to Srilanka via Thondi coast. Insofar as A5 is concerned, he gave a confession voluntarily, wherein, it has been stated that the contraband are transported to handing over to A2, 4 and 5, who were waiting in the car, in turn, they have planned to smuggle and transport the same to Srilanka Via Thondi coast. Based on the confession of A5, the present petitioners have been implicated under Section 29 of NDPS Act. Even though nothing was recovered from A2, 4 and 5, from the confession of co-accused, it would clearly reveal that the contraband was meant for smuggling to Srilanka via Thondi Coast by the above accused. Insofar as A6 is concerned, he is the driver of Autorickshaw, where the contraband was seized. Further, it is also seen that conducting search and seizure, the respondent



under the NDPS Act.

8. 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.

9. 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.

10. 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.

11. 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."

12. In the instant case, there is no reason to believe that the petitioners are not guilty of offences and if they are released on bail, they are not likely to commit any offence while on bail. Considering the above facts and circumstances of the case, I am not inclined to grant bail to the petitioner.



13. Accordingly, these criminal original petitions seeking bail are dismissed.

sd/-
15/09/2020

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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,
THIRUVADANAI POLICE STATION,
2. THE INSPECTOR OF POLICE,
NIBCID POLICE,
RAMANATHAPURAM.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to Mr.T.ANTONY ARULRAJ Advocate SR.Nos.6441,6442

ORDER IN
CRL OP(MD) Nos.7145, 8312
and 8315 of 2020
Date :15/09/2020

VSG
TK/PN/SAR.3/17.09.2020/5P/7C