



WEB COPY

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). No.8317 of 2020

Paramasivam @ Gounder

... Petitioner/Accused No.2

Vs

The State Rep. by
The Inspector of Police,
Thanjavur East Police Station,
Thanjavur District.
(Crime No.682/2020)

... Respondent/Complainant

For Petitioner : M/s.A.Balaji,
Advocate.

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

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

PRAYER :-

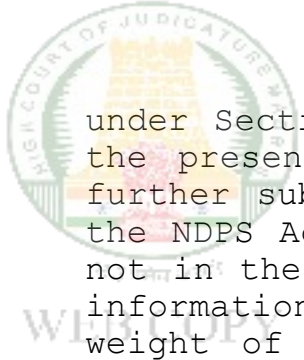
For Bail in Crime No.682/2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to judicial custody on 14.05.2020 for the offences punishable under Sections 8(c)r/w.20(b)(ii)(B) of NDPS Act on the file of the respondent police seeks bail.

2. The case of the prosecution is that on secret information with regard to transportation of Kanja in two gunny bags on 12.05.2020 the respondent police napped the petitioner along with other accused and they were found in possession in 20 kgs of kanja. After completion of formalities the respondent police registered the First Information Report.

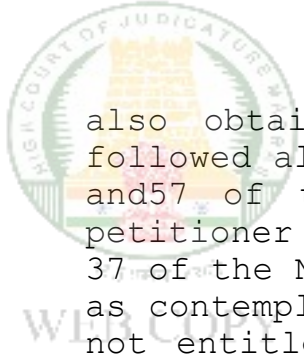
3. The learned counsel for the petitioner would submit that the respondent police ought to have followed the procedure laid down



under Section 50 of the NDPS Act, thereby the search to be made in the presence of the Executive Magistrate or Gazetted Officer. He further submitted that the procedure laid down under Section 50 of the NDPS Act can be excused only in case of a chance recovery and not in the case of well planned nabbing having received the secret information by the respondent herein. He further submitted that the weight of the gunny bags has not been deducted from the total quantity of contraband, therefore the case of the petitioner falls under the category of commercial quantity. He further submitted that the petitioner is in jail for more than four months, hence he may be granted bail.

4. The learned Government Advocate(Crl.Side) filed a counter and stated that on secret information the respondent police along with his team mate on 12.05.2020 went to the place of occurrence on information by the informer while they were observing the area as identified by the informer two persons each carrying white colour gunny bag were intercepted by the respondent police and they were found in possession of 20 kg of Kanja and they were explained their right as provided under Section 50 of the NDPS Act. They consented for search by the police party and on the spot consent letter was prepared and obtained from them. Thereafter they made search and found petitioner and other accused in possession of 10kg of Kanja each. After complying all mandatory provisions registered the First Information Report as against the accused persons and remanded to judicial custody. 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. He also relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in Criminal Appeal No.943 of 2005 in the case of **Vijaysinh Chandubha Jadega Vs- State of Gujarat**. Further the petitioner had very bad antecedent of four previous cases. That apart the petitioner was 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 he is not entitled for bail and prayed for dismissal of the petition.

5. It is seen that there are two accused in this case and the petitioner herein is arrayed as A2. On secret information on 12.05.2020 the respondent police intercepted the accused persons and they found the petitioner in possession of 20 kg of Kanja in two gunny bags each weighing 10 kgs. The only ground raised by the petitioner 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 intercepted the accused persons and found the petitioner along with other accused in possession of kanja weighing 20 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 petitioner fails to satisfy the twin test as contemplated under Section 37 of the NDPS Act, the petitioner is not entitled for bail. That apart the petitioner is also having four 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. 269 of 2013 for offence under Sections 294(b), 324, 506(ii) of IPC and Crime No. 211 of 2019 for the offences under Sections 294(b), 324 and 506(ii) of IPC on the file of the Thanjavur East Police Station, hence this Court is not inclined to grant bail to the petitioner.

6. Hence this petition 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
THANJAVUR EAST POLICE STATION,
THANJAVUR DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
3. THE OFFICER INCHARGE,
TRICHY PRISON, TRICHY.

ORDER
IN
CRL OP(MD) No.8317 of 2020
Date :12/10/2020