



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date : 12/10/2020

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PRESENT

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

CRL OP(MD). No.8490 of 2020

Vijay

... Petitioner/Accused No.5

Vs

The State rep. by  
The Inspector of Police,  
Cumbum North Police Station,  
Theni District ,  
Crime No. 909 of 2020.

... Respondent/Complainant

For Petitioner : M/s. M.Lingadurai,  
Advocate.

For Respondent : Mr.KR.Bharathikannan,  
Government Advocate (Criminal Side)

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

**PRAYER :-**

For Bail in Crime No. 909 of 2020 on the file of the Respondent Police.

**ORDER :** The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 16.06.2020 for the offences punishable under Sections 8(c)r/w. 20(b)(ii)(C), 25 and 29(1) of NDPS Act and Section 269 of IPC on the file of the respondent police seeks bail.

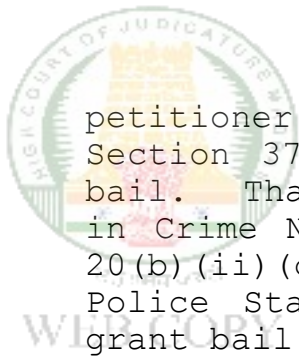
2. The case of the prosecution is that on 16.06.2020 at about 06.00 hrs the Sub Inspector of police attached to the respondent police received a secret information from the informant based on which while they were on duty at Kattuvapallivasal road, Cumbum at about 07.00 hrs a white colour Tata Indica Car bearing Reg.No. TN 60 E 2841 and a two wheeler bearing Reg. No. TN 60 V 0419 was intercepted and on enquired. After following the procedure laid down under Section 50 of the NDPS Act at about 9.30 hrs, A1 took two gunny bags weighing 23 kgs of Kanja from the car and produced before the respondent police. The same were recovered and thereafter the accused persons were arrested along with contraband and brought to the police station.



3. The learned counsel for the petitioner would submit that there are totally five accused in this case and the petitioner herein is arrayed as A5. He would also submit that even as per the First Information Report the said contraband was seized only from A1 which were kept in Car, whereas the petitioner alleged to have driven the two wheeler therefore the respondent ought not have implicated the petitioner herein in the crime. He would also submit that the entire case is foisted one because the neighbour of the petitioner had produced two CCTV footage wherein it seen that on 16.06.2020 at about 07.38 a.m., one constable namely Kannan wearing blue colour shirt attached to the Cumbum North Police Station took the petitioner who is wearing yellow colour skirt from the house of one Sathya , further the said Kannan was walking through the street and handed over the petitioner to one Satheesh, SPCID constable and one Silaiman , whereas the case has been registered on 16.06.2020 at about 07.00 hrs. Therefore it is clear that the police constables took the petitioner from the house and handed over the Inspector of Police, Silaiman in some other place, therefore it is proved that the entire prosecution case is a false one. He further submitted that the petitioner is in jail for nearly than four months, hence he may be granted bail.

4. The learned Government Advocate(Crl.Side) filed a counter and stated that there are totally seven accused in this case and the petitioner herein is arrayed as A5. A2,3,4,6 and 7 relatives and the third accused is the wife of the seventh accused. He would also submit that A2 married the sister of A6 and A6 married the sister of A5, thus A5 and A6 are closed related. 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. The petitioners 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. After complying all mandatory provisions registered the First Information Report as against the accused persons and remanded to judicial custody. Further the petitioner is having one previous cases. That apart the petitioner was found in possession of Ganja 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 seven accused in this case and the petitioner herein is arrayed as A5. Further the statement of the co-accused clearly explains the *modus operandi* of selling Ganja. The total quantity of Ganja recovered from the petitioner is 23 kgs which falls within the commercial quantity and therefore granting the relief of bail to the petitioner 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 one previous case in Crime No. 38 of 2020 for the offence under Section 8(c) r/w. 20(b)(ii)(c) and 25 of NDPS Act on the file of the Mudaliyarpatti Police Station, Puducherry, 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 SUPERINTENDENT,  
CENTRAL PRISON,  
MADURAI.
2. THE INSPECTOR OF POLICE,  
CUMBUM NORTH POLICE STATION,  
THENI DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

ORDER  
IN  
CRL OP(MD) No.8490 of 2020  
Date :12/10/2020

AAV  
SRS/ AKM/SAR-III/ 22.10.2020/ 3P/4C