



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 07/09/2020

WEB COPY

PRESENT

The Hon'ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD)No.8950 of 2020

A.Ganesan

... Petitioner/Accused-4

Vs

The State rep. by
The Inspector of Police,
C-2,Subramaniapuram (L and O)
Police Station, Madurai.
Crime No.288/2019.

... Respondent/Complainant

For Petitioner : M/s.G.S.Mahesh,
Advocate.

For Respondent : A.Robinson,
Government Advocate (Criminal Side)

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

PRAYER :-

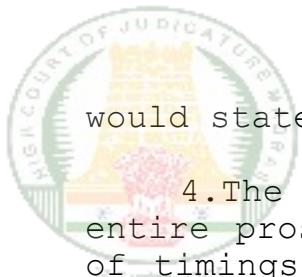
For Bail in Crime No.288 of 2019, on the file of the Respondent Police

ORDER : The Court made the following order :-

Heard, the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

2.The petitioner is in custody since 14.06.2019 for the offences punishable under Sections 8(c) read with Section 20(b)(ii)(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.288 of 2019, on the file of the respondent police.

3.The learned counsel for the petitioner raised twofold contentions. His first contention is that the petitioner was said to have been arrested at about 7.45 a.m. on 14.06.2019. The petitioner's counsel would point out that regarding the arrival of the witness, there is a serious discrepancy. While the respondents would claim that he arrived at 8.00 a.m., the attesting witness



would state that he was present at about 7.50 a.m. itself.

4.The petitioner's counsel wants this Court to disbelieve the entire prosecution in the light of the discrepancies in the matter of timings. He also would contend that totally four persons were arrested in two two-wheelers. From the petitioner and the other rider, what was seized were two gunny bags containing 11 kgs. and 10 kgs of contra-band.

5.The petitioner's counsel contended that if both the gunny bags are independently weighed, the petitioner's case will not attract the commercial quantity and Section 37 would be out of the way.

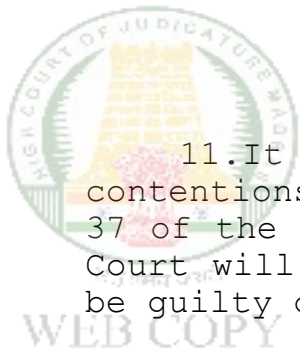
6.I am unable to agree with the contentions of the petitioner's counsel. As rightly pointed out by the learned Government Advocate for the respondent that eventhough there are some decisions of the Kerala High Court in favour of the afore said contentions, there are two direct decisions against the petitioner.

7.The Hon'ble High Court of Kerala in the case of **Subash .Vs. The Inspector of Police**, reported in **2013 SCC Online Kerala 15001** had held that the physical presence together with the contra-band in hand in and around the same car go a long way to rope them under the same transaction and on the same fabric.

8.In this case, four accused were found in two two wheelers, at the same time; all of them were arrested at the same spot and at the same time, one gunny bag weighed 11 kgs and other bag weighed 10 kgs. of Ganja. Therefore, prima facie I am of the view that the respondent cannot be found fault with for having clubbed both.

9.More than anything else the ruling of Madras High Court in the case of **Intelligence Officer, NCB Vs. Selvi** reported in **2013 (2) MLJ (Cri) 754** is on the point. In the said case, the accused was granted bail by independently considering the weight of bags containing ganja recovered from that accused. Cancelling the said bail, the Madras High Court held that when the accused has travelled with two other persons, the respective cases cannot be split up. Therefore, I have no hesitation to reject the contention raised by the petitioner.

10.As regards timings, as rightly contended by the learned Government Advocate, Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, will have no application to the case on hand. Nothing was recovered from the person of the accused. That being so, the time attributed to the arrival of the witness, as found in the consent letter may not have any bearing. However, these observations are made only for the purpose of dismissing the bail petition.



11.It is open to the petitioner herein to raise both these contentions at the time of trial, by way of defence. As per Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court will have to give a finding that the accused is not likely to be guilty of the offences.

12.Considering the materials before this Court, I am not in a position to render such a finding in favour of the petitioner.

13.Accordingly, this Criminal Original petition is dismissed.

sd/-
07/09/2020

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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,
C-2, SUBRAMANIPURAM (L AND O)
POLICE STATION, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.8950 of 2020
Date :07/09/2020

RM
SRS/ PN/ SAR-II/ 16.09.2020/ 3P/4C