



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/11/2020

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PRESENT

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

CRL OP(MD) . No.9870 of 2020

P.Srinivasan

... Petitioner/8th Accused

Vs

State Rep. by
The Inspector of Police,
NIBCID Police Station, Ramnad,
Ramanathapuram District.

... Respondent/Complainant

For Petitioner : Mr.T.Balakumaran,
Advocate.

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

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

PRAYER :- For Bail in C.C.No.38 of 2020, on the file of learned Additional District and Sessions Judge, Special Court, for E.C and NDPS Act, Pudukkottai in Crime No.58 of 2019 on the file of the respondent police and thus render justice.

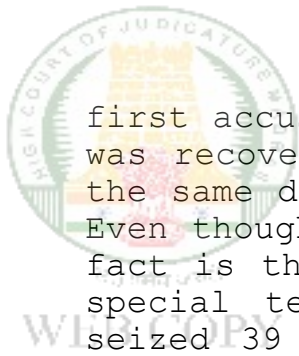
ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner is arrayed as accused No.8. He was arrested and remanded to Judicial Custody on 25.12.2019 for the offences punishable under sections 8(c) r/w. 20(b)(ii)(C), 25, 27A and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.58 of 2019 on the file of the respondent police. He seeks bail.

3. The learned counsel appearing for the accused/petitioner pointed out that the case of the prosecution is that based on the secret information received by the police on 25.12.2019, the respondent police arrested accused Nos.1 to 6 on the same day and

<https://hccsecrecourt.gov.in/Key/cr/> of Ganja from them. Based on the confession of the



first accused, the seventh accused was arrested and 20Kgs. of Ganja was recovered from him. Thereafter, the petitioner was arrested on the same day and 10Kgs. of Ganja was recovered from the petitioner. Even though this is the stand now projected by the prosecution, the fact is that the Superintendent of Police, Ramnad District and the special team working under him arrested accused Nos.1 to 6 and seized 39 bags of Ganja totally weighing 80Kgs. Thereafter, they handed over the case for investigation to the jurisdictional investigating agency, namely, the respondent herein. This was widely published in the media. Photographs of the police including the Superintendent of Police posing with the recovered 80Kgs. of Ganja in 39 bags was published in all the local newspapers. The learned counsel appearing for the petitioner drew my attention to the fact that disbelieving the recovery of 20Kgs from accused No.7 Banumathi, this Court had granted bail vide order dated 06.02.2020 made in Crl.O.P.(MD)No.1364 of 2020. The petitioner's counsel contended that the case of the petitioner is on a similar footing and that therefore, the petitioner should also be granted bail. He would also point out that the petitioner is not having any bad antecedent.

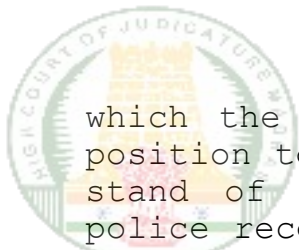
4. The petitioner's earlier bail petition was dismissed as withdrawn on 29.01.2020 and when he moved a second petition, this Court had directed the petitioner to wait till final report is filed. The final report has since been filed and the special Court had taken cognizance of the offence in C.C. No.38 of 2020. All the materials are very much before this Court and on a careful perusal of the same, it can be seen that there is no legally admissible evidence to connect the petitioner with the crime in question. This is the contention of the petitioner's counsel.

5. The stand of the petitioner is strongly opposed by the learned Government Advocate(Crl. Side) appearing for the respondent. The learned Government Advocate(Crl. Side) took me through the materials on record and also the case laws reported in 2016 (14) SCC 640 (*Mehboob Ali and Another Vs. State of Rajasthan*) and 2019 (4) MLJ(Cri) 238 (*Thavasi and Others*).

6. The learned Government Advocate wanted this Court to dismiss this bail petition as not maintainable.

7. I carefully considered the rival contentions.

8. The case on hand involves commercial quantity. 80Kgs. of Ganja was totally recovered. Therefore, the petitioner though ranked as accused No.8 will have to necessarily satisfy the twin tests set out in Section 37 of the NDPS Act. Of course the petitioner is not having any previous case registered against him under NDPS Act 1985. Therefore, I can safely give a finding that he is not likely to commit any offence while being on bail. But then, it is not sufficient. I have to be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence with



which the petitioner is accused. I am afraid that I am not in a position to render such a finding in favour of the petitioner. The stand of the prosecution is that on 25.12.2019, the respondent police received secret information and based on the same, they went to Othapatti seashore. There, they arrested accused Nos.1 to 5. Accused No.1 confessed that the petitioner herein, namely, Srinivasan had supplied 10 Kgs. of contraband and that out of the same, 30 Kgs. of Ganja have been brought by them to the seashore. From accused Nos.1 to 5, 30Kgs. of Ganja was recovered. Another 20Kgs. of Ganja was recovered from the boat belonging to accused No.6. Based on the disclosure statement of accused No.1, the petitioner was arrested at New bus stand, Ramanathapuram and from him 10 Kgs. of Ganja was recovered under a cover of Seizure Mahazar in the presence of L.W.1 and L.W.2. The petitioner herein was having the mobile phone with No.7094046199. The petitioner confessed that he had entrusted the entire contraband to accused No.11 Manikandan for transportation to Sri Lanka. The respondent police were not even aware of the involvement of the petitioner herein or that of accused No.11 Manikandan. As on date, accused No.11 Manikandan is still absconding. He is said to be hiding in Sri Lanka. After the filing of final report, the police have obtained call data and it is seen that the petitioner was in continuous contact with the mobile number of Sri Lanka from 23.12.2019 to 25.12.2019. That appears to be the contact number of accused No.11 Manikandan.

9. The learned Government Advocate(Crl. Side) contended that the police are not precluded from collecting further incriminating material against accused even after the final report is filed.

10. I am in full agreement with this contention of the learned Government Advocate. Even if I disbelieve the recovery of 10 Kgs. of Ganja from the petitioner, the recovery of mobile phone cannot be doubted and the contact which the petitioner had with accused No.11 Manikandan, accused No.9 Selvakumar and accused No.10 Palanikumar who are still absconding cannot also be doubted. Accused No.1 had implicated the petitioner and the petitioner in turn implicated accused No.11. In view of the call data placed by the respondent police before this Court, I am unable to render a finding in favour of the petitioner in terms of Section 37 of NDPS Act that he is not likely to be guilty of the offence in question. Since the petitioner is unable to satisfy the primary test set out in Section 37 of NDPS Act, I have to necessarily dismiss the bail petition. The petitioner has to establish his innocence only in the trial.

11. I make it clear that these observations have been made only for the purpose of disposing this bail petition. The petitioner's defences in all respects are left open. The learned trial Judge will pronounce on the guilt or innocence of the petitioner based on the evidence adduced before the Court below and will not in any way be influenced by the dismissal of this criminal original petition.



12. With these observations, this criminal original petition stands dismissed.

sd/-
02/11/2020

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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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT, FOR E.C AND NDPS ACT, PUDUKKOTTAI.
- 2 THE INSPECTOR OF POLICE,
NIBCID POLICE STATION, RAMNAD,
RAMANATHAPURAM DISTRICT.
- 3 THE OFFICER INCHARGE,
DISTRICT JAIL, RAMANATHAPURAM.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.9870 of 2020
Date :02/11/2020

pmu
JM/PN/SAR II/30.11.2020/4P/5C