



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 31/08/2020

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PRESENT

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

CRL OP(MD). Nos.9066, 5077, 5306, 6548 and 5254 of 2020

Venkatachalam @ Venkatesan,

:Petitioner / Accused No.1
in Crl.O.P.(MD)No.9066 of 2020

Saro

: Petitioner / Accused No.3
in Crl.O.P.(MD)No. 5077 of 2020

R.Sakthivel

: Petitioner/ Accused Rank Not Known
in Crl.O.P(MD)No.5306 of 2020

Ravi

: Petitioner/ Accused Rank Not Known
in Crl.O.P(MD)No.6548 of 2020

Sakthivel

:Petitioner / Accused No.6
in Crl.O.P.(MD)No.5254 of 2020

Vs

State Rep.by
The Inspector of Police,
Athoor Police Station
Thoothukudi District
Crime No.137/2019.

... Respondent/Complainant
in all Crl.O.Ps.

For Petitioner : M/s. S.Mandhiralingeswaran,
(in Crl.O.P(MD) No.9066 of 2020)
: Mr.M.Jegadeesh Pandian
(in Crl.O.P(MD) No.5077 of 2020)
: Mr.R.Anand
for Mr.K.Balasubramani
(in Crl.O.P(MD) No.5306 of 2020)
: Mr.R.Anand
(in Crl.O.P(MD) No.6548 of 2020)

: Mr.Karuppasamy Pandian for
M/s.S.Ramachandra Pradeep
(in Crl.O.P(MD) No.5254 of 2020)



For Respondent

: Mr.A.Robinson,
Government Advocate (Crl.Side)
(in all Crl.O.Ps)

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

COMMON PRAYER :-

For Bail in Crime No.137 of 2019 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

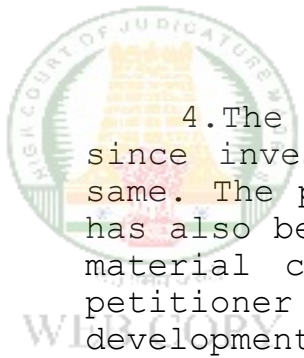
The petitioners herein are in custody for the offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act, 1985. Their respective ranks are as follows:-

Accused	Rank
Venkatachalam @ Venkatesan S/o.Ramasamy	A1
Saro S/o. Rayappan	A3
Sakthivel S/o.Rethanasabapathi	A4
Ravi S/o.Murugaiyan	A5
Sakthivel S/o.Kanthasamy	A6

A1-Venkatachalam @ Venkatesan was arrested on 21.08.2019. A3-Saro was arrested on 28.08.2019. A4-Sakthivel was arrested on 28.08.2019. A5-Ravi was arrested on 29.08.2019. A6-Sakthivel was also arrested on 21.08.2019.

2.The learned counsel appearing for the petitioners submitted that the petitioners are not having any previous cases. They would strongly submit that the materials on record are not sufficient to connect the petitioners with the crime. A1-Venkatachalam @ Venkatesan is said to be the driver who drove the vehicle, in which, the contraband was seized.

3.According to the petitioners' counsel, A1-Venkatachalam @ Venkatesan was not aware of what he was transporting. As regards the other petitioners, except the confession of the co-accused, there is no other material against the petitioners. It is well settled that on the strength of mere confession of the co-accused, a conviction cannot be anchored. In view of the current pandemic times, there is no possibility of the trial commencing in the foreseeable future. That apart, though there are 13 accused in this case, only three are still at large. There is every likelihood of the matters getting prolonged in these circumstances. Keeping the petitioners in continued incarceration would definitely not serve the ends of justice. The petitioners, therefore, want this Court to



4.The petitioners had earlier moved this Court for bail. But since investigation was pending, they have chosen to withdraw the same. The prosecution has since filed the final report and the same has also been taken on file as C.C.No.97 of 2020. This constitutes a material change in circumstance and the learned counsel for the petitioner wanted this Court to grant them bail in the light of this development.

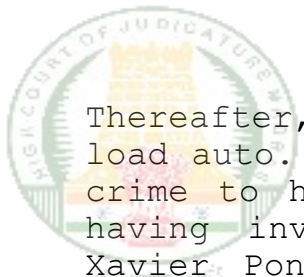
5.This Court issued notice to the respondent and the respondent through the learned Government Advocate (Crl.side) have strongly opposed these applications.

6.It is not in dispute that the case involves commercial quantity. What was seized from the vehicle driven by A1-Venkatachalam @ Venkatesan was 294 kg of ganja. Therefore, to grant bail, the twin tests laid down in Section 37 of the NDPS Act must be satisfied. It is true that the petitioners are not having any bad antecedents. Therefore, this Court can safely render a finding that they are likely to commit any offence while on bail. But then, that itself may not be sufficient. The petitioners have to surmount a bigger threshold. This Court must be satisfied that there are reasonable grounds for believing that the petitioners are not guilty of the offence in question.

7. The Police personnel attached to Athoor Police Station, Thoothukudi District, were on their rounds on 21.08.2020 at about 03.00 a.m at Authoor - Serunthapoomangalam Road, near V.V.Minerals Company. They intercepted the vehicle TATA ACE bearing Registration No.TN 04 AK 4762. It was driven by A1-Venkatachalam @ Venkatesan. The said Venkatachalam @ Venkatesan-A1 did not give satisfactory answers to the questions posed by the Police. A search of the vehicle led to the discovery of the contraband which was hidden beneath empty liquor bottles. The contraband was hidden in 12 polythene sacks. The contraband is said to be worth Rs.29,40,000/- in the illegal market. A1 is said to have confessed that he had undertaken the task of transporting the contraband from Mukkanai Roundana to Punnaikayal. He further stated that he was engaged to do so by one Kildan S/o.Ravi Koraira. The contraband was duly seized. The mobile phone with A1-Venkatachalam @ Venkatesan was also seized. The said accused as well as contraband were brought to the Station and Crime No.137 of 2019 was registered.

8.Investigation was undertaken and the call data of A1-Venkatachalam @ Venkatesan as well as A2- Kildan was verified. It then came to be known that A3-Saro had been having regular conversations with A2-Kildan. Based on the same, A3-Saro was arrested and his mobile phone as well as sim card were recovered. It is seen from the statement of LW22-Xavier Ponraj recorded under Section 161 of Cr.P.C that A3-Saro was conspiring with A2-Kildan to transport the contraband. The said Xavier Ponraj has stated that he

<https://www.mca.gov.in/jsp/serve>



Thereafter, he has been carrying on independent business with his load auto. Saro-A3 is said to have confessed his involvement in the crime to him. Xavier Ponraj claims that he pulled up Saro-A3 for having involved himself in the nefarious activities of Kildan. Xavier Ponraj had specifically stated that in August 2019, when Xavier Ponraj was going in his load auto past mid night at about 1.45 a.m, he received a call from Saro-A3 on his mobile number bearing 9080079324 from A3-Saro's mobile number bearing 7339159277. Saro-A3 wanted to know if Xavier Ponraj saw any police movement in his route.

9. In view of the call data indicating exchange of calls between A2-Kildan and A3-Saro and the statement of LW22-Xavier Ponraj, I am not in a position to give a finding that A3-Saro is not guilty of the offences in question.

10. As regards A1-Venkatachalam @ Venkatesan, it is impossible for this Court to give any finding in his favour at this stage. A1-Venkatachalam @ Venkatesan has to necessarily establish his innocence only in the trial. This is because, the entire contraband was recovered from the vehicle driven by him. The arrest of A1-Venkatachalam @ Venkatesan and the recovery of his mobile phone has pointed to the involvement of Kildan-A2 and few other key persons. A1-Venkatachalam @ Venkatesan miserably fails to pass the first test laid down in Section 37 of the NDPS Act.

11. Coming to the case of A4-Sakthivel, it is seen that he is the owner of the vehicle, from which, the contraband was recovered. A4-Sakthivel confessed that his vehicle was hired by A5-Ravi and A9-Lakshmanan. He had accompanied in the said vehicle from Malavarayannallur to Tuticorin with A5. The contraband had arrived from Andhra at Trichy and from Trichy, it was transported to Tuticorin and from there, it was being transported to Punnaikayal and from where, it was to be sent to Srilanka. A4-Sakthivel, apart from, being the owner of the vehicle, had also accompanied, when the contraband was in transit to Tuticorin. From the call data, it is seen that A4 (Sakthivel) and A5(Ravi) had regular conversation. Therefore, this Court is not in a position to give any finding that A4-Sakthivel is not guilty of the offence in question.

12. Coming to A5-Ravi, the case of the prosecution is that Ravi is the owner of the Xylo Car bearing registration No.TN 18 X 0919 and he helped to transport ganja from Thiruthirai Poondi Village to the factory premises of A6-Sakthivel at Thiruvananthurai in Thiruvarur District. A5-Ravi is said to have driven the vehicle himself from Thiruvananthurai Village to Mukkanai Roundana Village. The contraband was shifted in TATA ACE vehicle that belonged to Sakthivel. While Sakthivel accompanied him, it was Ravi who had driven the vehicle. There was frequent mobile conversation between A5-Ravi and A9-Lakshmanan. Ravi-A5 had checked



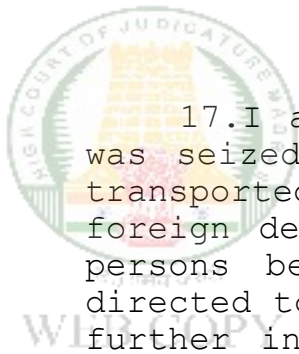
into Ganga Hotel, Tuticorin District and the police have recovered the hotel receipt.

13. From tower location of A5-Ravi's mobile and that of A4-Sakthivel, A7-Muruganantham and A9-Lakshmanan, the prosecution is able to *prima facie* establish that A4-Sakthivel and A5-Ravi have driven the TATA ACE vehicle from Nagapattinam to Tuticorin. After reaching Tuticorin, the contraband was handed over to A2-Kildan to be transported to Srilanka. A2-Kildan had engaged A1-Venkatachalam @ Venkatesan and A1-Venkatachalam @ Venkatesan had taken the contraband from Mukkanai Roundana to Punnaikayal and en-route, the respondent Police intercepted and arrested A1 and recovered the contraband. A2-Kildan, A12-Kumaran and A13-Suriya are still absconding. Therefore, I am not in a position to give a finding that A5 Ravi is not guilty of the offences in question.

14. Coming to A6-Sakthivel, it is the specific case of the respondent that when the contraband was transported from Trichy to Tuticorin, it was kept for safe custody for a while in the factory premises being run by the sixth accused -Sakthivel. The specific case of the prosecution is that at the request of Lakshmanan, A6-Sakthivel had kept the contraband in his factory premises on 13.08.2019 and 14.08.2019. The Police also have gathered from the call data that there were frequent mobile conversations between A6-Sakthivel and A9-Lakshmanan. A6-Sakthivel is running a bottle washing company in the name of his son Asai Eswaran at Thiruthurai Poondi - Mannarkudi Main Road. While shifting the contraband from his premises, in TATA ACE Van belonging to other Sakthivel along with contraband, a number of empty grade and empty quarter bottles were also loaded. The Police have recorded the statements of two of the employees of A6. In view of these materials, I am not in a position to give a finding that A6-Sakthivel is not guilty of the offences in question.

15. Therefore, all these bail petitions will have to be dismissed and they are accordingly dismissed. But the matter cannot rest there. It is seen that even though mobile phones and sim cards were recovered from the accused, they were not sent to the forensic science laboratory for analysis. The investigation officer has also not recorded the statements from the net work service providers as regards the call details and tower locations. The address proofs given by the accused at the time of obtaining sim cards have not been verified. Three of the accused are still absconding. It is seen that the respondents sought extension of time from the Court below. But a period of only one month was given for concluding the investigation.

16. The learned Government Advocate (Crl.side) appearing for the prosecution submitted that this Court may, therefore, permit the investigation officer to conduct further investigation.



17. I am of the view that the said request is reasonable. What was seized was a huge quantity of 294 kg of ganja. It has been transported from one place to another and it is said to be meant for foreign destination. The absconding accused appear to be the key persons behind the entire crime. Therefore, the respondent is directed to file a formal petition seeking permission for conducting further investigation. The Court below is directed to allow the same. These bail petitions are dismissed with the aforesaid direction.

sd/-

31/08/2020

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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,
ATHOOR POLICE STATION
THOOTHUKUDI DISTRICT.
2. THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP (MD). Nos. 9066, 5077,
5306, 6548 and 5254 of 2020

Date : 31/08/2020

MS/JC/SAR-3/02.09.2020/6P.4C