



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) .Nos.10720 and 10722 of 2020

1.Sugapriya
2.Santhosh
3.Swathi

...Petitioners/Accused No.A1,A3&A4
(in CRL OP (MD) No.10720/2020)

1.Chellakali
2.Jaya

...Petitioners/Accused No.A6&A7
(in CRL OP (MD) No.10722/2020)

Vs

The State rep. by
The Inspector of Police,
Cumbum North Police Station,
Theni District.
Cr.No.733 of 2020.

... Respondent/Complainant
(in both the petitions)

In Both Petitions:

For Petitioners: Mr.M.Lingdurari,
Advocate.

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

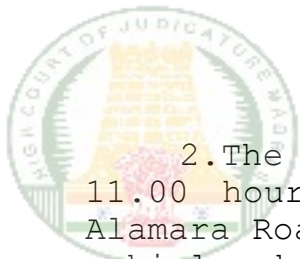
PETITION FOR BAIL Under Section 439 of Cr.P.C.

COMMON PRAYER :-

For Bail in Crime No.733 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners /A1, A3, A4 herein are arrested on 19.05.2020 and the petitioners/Accused Nos.A6, A7 herein are arrested on 02.06.2020 for the alleged offences under Sections 8(c) r/w 20(b)(ii)(c), 29 (1) & 25 of NDPS Act and 269 IPC.



2.The case of the prosecution is that on 19.05.2020 at about 11.00 hours the respondent police had gone to Cumbum Manikatty, Alamara Road at the junction of By Pass Road western side and made a vehicle checkup for Ganja. At a time a vehicle bearing Registration No.TN-63-E-1414 was identified by the secret informer. At about 11.15 hours the police party intercepted the vehicle and found four male persons and three women in that vehicle further in that vehicle six fertilizer bag were found and on checkup with the consent of the accused the respondent recovered 180 kg of Ganja at about 13.15 hours and recorded confession statement from A1. At that time one Chellakali, Jayakumar, Vannakili and Jaya escaped from that place. After complying formalities, A1, A3 and A4 were arrested on 19.05.2020 at about 17.30 hours and the remaining accused A2 and A5 were arrested on the same day. Therefore, the case has been registered in Crime No.733 of 2020 under Sections 8(c) r/w 20 b (ii) (c) 29(1) & 25 NDPS Act & 269 IPC. Subsequently, the absconded accused Chellakali/A6 & Jaya/A7 were arrested on 02.06.2020.

3. The learned counsel for the petitioners 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 would also submit that the petitioners are innocent and they have been in jail for more than five months, hence they may be granted bail.

4.The learned Government Advocate(Criminal Side) would submit that the accused were found in possession of 180 kg of Ganja, which falls under the commercial quantity. 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. That apart the petitioners were found in possession of Kanja which falls within the commercial quantity and as such there is bar under Section 37 of the NDPS Act and thus they are not entitled for bail.

5.It is seen that there are totally nine accused, in which, the petitioners herein are arrayed as A1, A3, A4, A6 and A7 and they were found in possession of 180 kg of Ganja. 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 petitioners fail to satisfy the twin test as contemplated under Section 37 of the NDPS Act, the petitioners are not entitled for bail. Now investigation in this case is completed and the final report has been filed before the Special Court and the case stands posted for furnishing copies to the accused, hence this Court is not

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entitled to grant bail to the petitioners.



6. Hence, these Criminal Original Petitions are dismissed.

sd/-
12/10/2020

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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 SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN,
MADURAI.
2. THE OFFICER INCHARGE,
DISTRICT JAIL,
THENI.
3. THE INSPECTOR OF POLICE,
CUMBUM NORTH POLICE STATION,
THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No.10720&10722/2020
Date :12/10/2020

VSD
SRS/SMA/SAR-III/03.11.2020/ 3P/5C