



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.10539 of 2020

1.M.Selvaraj
2.Ayyappan
3.R.Paramananthan

... Petitioners/Accused
No.3,4 and 5

Vs

State Represented by
The Superintendent,
Narcotics Control Bureau,
Madurai Sub Zone, Madurai.
NCB F.No.48/1/01/2020/NCB/MDU.

... Respondent/Complainant

For Petitioners : Mr.T.Lajapathi Roy,
Advocate.

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

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

PRAYER :-

For Bail in Crime No. NCB F.No. 48/ 1/ 01/2020/NCB/MDU on the file of the Respondent Police

ORDER : The Court made the following order :-

The petitioners/A3 to 5, who were arrested and remanded to judicial custody on 14.02.2020 for the offences punishable under Sections 8(c)r/w.20(b)(ii)(C),25,28 and 29 of NDPS Act on the file of the respondent police seeks bail.

2. The case of the prosecution is that the investigation officer had received a secret information regarding transportation of Ganja from Andhra Pradesh to Thanjavur District for a quantity of 600 kgs in a truck bearing Reg. No. TN 03 Z 1618, based on the above said information the investigating officer had examined the said vehicle along the accused persons and it was seized by them.



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 seven months, hence they may be granted bail.

4. The learned Government Advocate (Crl. Side) would submit that the accused were found in possession of 661.5 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 no bar under Section 37 of the NDPS Act and does they are not entitled for bail. He also stated that the 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 and prayed for dismissal of the petition.

5. It is seen that there are nine accused in this case and the petitioners herein is arrayed as A3, A4 and A5 and they were found in possession of 661.5kg 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 inclined to grant bail to the petitioners.

6. Hence these petitions 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.

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TO

1.THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/
SPECIAL JUDGE UNDER E.C. ACT CASES,
THANJAVUAR DISTRICT.

2.THE SUPERINTENDENT,
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE, MADURAI.

3.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.T.LAJAPATHI ROY Advocate SR.No.6961

ORDER
IN
CRL OP(MD) No.10539 of 2020
Date :12/10/2020

AAV
TK/PN/SAR.2/22.10.2020/3P/6C