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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 04/12/2020

Pronounced on : 11/12/2020

PRESENT

The Hon'ble Mr. Justice G.K. ILANTHIRAIYAN

CRL OP(MD) . No. 11334 OF 2020

1. K.Gopinath

2. Ramesh

... Petitioners/Accused-2&3

Vs

The State rep. by
The Inspector of Police,
NIBCID, Ramnad District.
Crime No. 58 of 2019.

... Respondent/Complainant

For Petitioners: Mr.V.Kathirvelu, Senior Counsel
for Mr.Na.Manimaran, Advocate

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

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

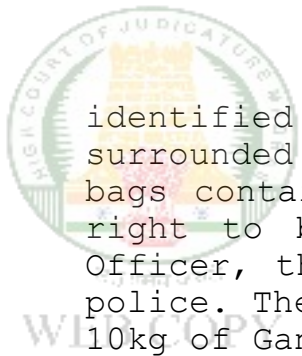
PRAYER :-

For Bail in Crime No. 58 of 2019 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners/accused 2 and 3 herein were arrested on 26.12.2019 for the alleged offences under Sections 8(c)r/w. 20(b)(ii)(C), 25,27(A) and 29(c) of NDPS Act.

2. Totally there are 11 accused in this case, the petitioners herein are arrayed as A2 and A3. The case of the prosecution is that on 25.12.2019, on secret information received by the respondent police that A1 and A9, their family members and friends were transporting Ganja to Srilanka from Dhanushkodi, Othapatti Seashore, the respondent police went there and waiting near Othapatti beach in the Dhanushkodi road. At about 07.00 p.m., when the informant



identified the vehicle belonging to the petitioners, the respondent surrounded them and found A1 to A6 inside the car with two gunny bags containing Ganja in the car. After informing them about their right to be searched by a Judicial Magistrate or by a Gazetted Officer, they voluntarily accepted for the search by the respondent police. Thereafter, on search, the respondent police found 20 kg and 10kg of Ganja in each bags and the same was seized under a mahazhar. Thereafter, on the confession given by A6, they searched a boat, wherein, they found another bag of 20 kg of Ganja. On further confession of A1 and A6, the respondent police seized 20 kg of Ganja in A7 house and another 10 kg of Ganja from A8 near the bus stand. In total, the respondent police seized 80kg of Ganja from all the accused. After following the mandatory procedure, the petitioners were arrested and remanded to judicial custody on 26.12.2019.

3. The learned Senior Counsel appearing for the petitioners would submit that there are totally 11 accused in this case and the petitioners herein are arrayed as A2 and A3. He further submitted that there is absolutely no truth behind the theory of prosecution. As directed by the Superintendent of Police on receipt of secret information the special team was formed and they intercepted the vehicle near Sivagangai and seized 39 bags of ganja from A1 to A6 weighing 80 kgs of ganja and the said news was also published in the newspaper along with photos. Thereafter the case was handed over to the respondent police who is being a jurisdiction police and they registered a case with a complete put up story as against the petitioners and others alleging that on secret information they intercepted the vehicles which was driven by A1 to A6 and seized the contraband weighing 30 kgs. Thereafter on confession of the first accused the respondent police went to the house of the seventh accused and seized the contraband weighing 20kg. Thereafter on the confession of the first accused they arrested 8th accused and seized 10 kg of contraband.

4. He further submitted that though the petitioners already filed a petition for bail before this Court and the same was dismissed by this Court on 11.09.2020. The petitioners filed petition on the ground of default bail since final report was not filed within 180 days as contemplated under the Act. However the said petition was dismissed for the reason that the respondent filed the petition before the concerned Court within a period of 180 days, therefore the petitioners filed this petition for consideration on merits.

5. He also relied upon the order passed by this Court in respect of A7 namely the mother of A1, A5 and A10 and submitted that the respondent came with a different story that A1 to A6 were already intercepted by the other police as directed by the Superintendent of Police and seized contraband weighing 80kgs in 39 bags, where as the respondent came with a new story that the
<https://www.secretpolice.in/> seized 70 kgs from six white colour gunny bags as



alleged in the First Information Report. There is absolutely no possibility to convict the petitioners since they have not committed any offence as alleged by the prosecution.

6. He further submitted that in so far as the petitioners are concerned no previous case is pending against the petitioners and this is the first case under NDPS Act. Further the petitioners fulfilled the twin conditions as contemplated under Section 37 of NDPS Act. He further submitted that the petitioners were arrested and remanded to judicial custody on 26.12.2020, therefore he sought for bail.

7. The learned Government Advocate(Criminal Side) would submit that there are totally 11 accused in this case and the petitioners herein are arrayed as A2 and A3 and the petitioners herein were arrested and remanded to judicial custody on 26.12.2019. He further submitted that bail petition of the petitioners were dismissed by this Court by a detailed order dated 11.09.2020 and there is no change in circumstances of the case to consider the second bail petition of the petitioners.

8. He further submitted that the 7th accused in this case was granted bail by this Court in Crl.O.P(MD) No.1364 of 2020 dated 06.02.2020 and she is standing in the complete different footing. The respondent on confession of the first accused went to the house of the 7th accused and seized the contraband weighing 20 kg, whereas the news published in the newspaper reveals that total contraband weighing 80 kgs in 39 bags were seized from A1 to A6. Both are contradictory to each other and as such this Court considered her bail petition and granted bail to her. Whereas the petitioners are concerned even according to the newspaper as well as respondent version contraband were seized from A1 to A6. Therefore specific overt act has been attributed as against the petitioners and they failed to fulfil the twin conditions as contemplated under Section 37 of NDPS Act and prayed for dismissal of the petition.

9. It is seen that there are totally 11 accused in this case and the petitioners herein are arrayed as A2 and A3. On secret information the respondent intercepted the car and found A1 to A6 inside the car and they were in possession of contraband weighing 30 kgs. On confession of co-accused they seized 20kg of ganja from A7 and another 20 kg of ganja from A10. Further alleged that 10 kg of contraband was recovered from 8th accused. A1, A5 and A10 are brothers and born to the 7th accused and 9th accused is their brother -in -law.

10. According to the case of prosecution A1 and A9 intended to purchase contraband and sell at Srilanka and accordingly 6th accused who is proposed to transport the contraband and handover the same to the 11th accused at Srilanka. Accordingly on 23.12.2019 A1 to A5 and A8 and purchased contraband weighing 70 kgs from



the house of the first accused. Again on 25.12.2019 A1 to A6 with a contraband of 30 kgs when they about to shift to the boat owned by A6, the respondent police intercepted and seized the contraband. Thereafter on the confession of the first accused they seized the contraband weighing 20 kgs from the possession of A7. Thereafter on the confession of the first accused they also seized 10 kg of contraband from the 8th accused and also seized 20kg from A10. Therefore total contraband seized was 80kg from A1 to A11.

11. The learned Senior Counsel relied upon order passed by this Court in Crl.O.P(MD) No.1364 of 2020 dated 06.02.2020, thereby this Court granted bail to the seventh accused on the ground that there are two stories by the prosecution and as such A7 fulfilled the twin conditions as contemplated under Section 37 of NDPS Act. Whereas the petitioners are concerned they were arrayed as A2 and A3. Even according to the respondent as well as news published in the newspaper the contraband weighing 80kgs only. When the contraband was transported to load and when it was about to leave to Srilanka were seized by the respondent weighing 30 kgs and thereafter 20 kg from A7 on the confession of the first accused again 10kgs from the 8th accused and another 20kgs from the 10th accused.

12. So far as the petitioners are concerned when they were travelling in the Car they were intercepted and found in possession of contraband. Therefore the petitioners are standing in the different footing than the seventh accused. Further this Court while dismissing the earlier bail petition of the petitioners passed a detailed order on the ground of default bail. This Court is not inclined to grant bail to the petitioners since quantity involved in commercial quantity and the petitioners have also failed to fulfil the conditions as contemplated under Section 37 of N.D.P.S. Act, hence this Court is not inclined to grant bail to the petitioners.

13. In the result, the petition stands dismissed.

sd/-
11/12/2020

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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 OFFICER IN CHARGE,
DISTRICT PRISON,
RAMNAD.
2. THE INSPECTOR OF POLICE,
NIBCID, RAMANAD DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.11334 of 2020
Date :11/12/2020

AAV
SRS/JC/SAR-IV/16.12.2020/5P/4C