



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

Reserved on : 04/12/2020

Pronounced on : 22/12/2020

PRESENT

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

CRL OP(MD). No.11308 of 2020

P.Eswari @ Ayieswari

... Petitioner/Accused No.2

Vs

The State rep.by
The Inspector of Police,
NIB-CID,Sivagangai,
Sivagangai District.
Crime No.12/2020.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu,Advocate.

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

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

PRAYER :-

For Bail in Crime No.12 of 2020 on the file of the Respondent Police

ORDER : The Court made the following order :-

The petitioner/A2 herein were arrested on 24.08.2020 for the alleged offences under Sections 8(c)r/w. 20(b)(ii)(C),29(1) and 25 of NDPS Act.

2. The case of the prosecution is that on 22.06.2020 based on secret information the respondent police conducted a vehicle check up near Trichy to Pudukottai Main road near Milk farm bus stop at about 16.00 pm., a white colour xylo car bearing Reg. No. TN 22 CH 4986 was on the way to Trichy to Pudukottai and the respondent police stopped the vehicle and found the third accused inside the car and seized 72 Nos contraband in plastic bag each weighing 2 Kg of ganja. Then the respondent police had taken the sample in the presence of accused and thereafter recorded the statement and



registered the case against the petitioner and four others in Crime No.12 of 2020 under Section 8(c)r/w.20(b)(ii)(c) 25 and 29(i) of NDPS Act.

3. The learned Senior Counsel appearing for the petitioner submitted that there are totally five accused in this case and the petitioner herein is arrayed as A2. The respondent police conducted search at Trichy to Pudukottai main road near Mill farm bus stand and no independent witnesses were recorded. In so far as the petitioner is concerned no contraband has been recovered from her. She was not present in the scene of occurrence and she has been robed into this case only on the confession of the co-accused persons for the offence as alleged by the prosecution and she happens to be the step mother of the first accused and she has been mechanically implicated as an accused.

4. He further submitted that the petitioner does not have any bad antecedents and this is the first case. Though the first accused is having bad antecedents and also involved in similar type of offences the petitioner is no way connected with the offence and she did not commit any offence as alleged by the prosecution along with other accused persons. He would also submit that there is no possibility for convicting the petitioner and she also fulfilled the twin conditions as contemplated under Section 37 of NDPS Act. In support of his contention he also relied on the decision reported in **2019(2)MWN (cr.).242** in the case of **Kumar @ Ranjith Kumar -Vs- State**. He further submit that the petitioner was arrested and remanded to judicial custody on 24.08.2020, hence he seeks bail.

5. The learned Government Advocate(Crl.Side) appearing for the respondent filed a counter and submitted that on 22.06.2020 at about 12.00 hrs when the respondent was in duty, received a phone call from an informer that some persons are going to transport ganja illegally to Srilanka via Pudukottai through the While Colour xylo car bearing Reg. No. TN 22 CH 4986 and he also assured that he will identify the vehicle to them. Immediately he reduced the said information in writing and intimated the said message to the immediate superior and necessary permission was obtained.

6. Thereafter he went to the spot, pointed out by the informer along with police team and commenced vehicle check up near the bus stop of Pudukottai Milk farm(Pal Pannai) and at about 16.30 hrs the secret informer identified the vehicle bearing Reg. No. TN 22 CH 4986 which comes from Trichy road towards Pudukottai and he left the place. Immediately the respondent police intercepted the vehicle and introduced themselves to the driver of the said vehicle by showing their identity cards. on enquiry the driver informed that his name was Naina Mohamed/3rd accused and native of Senkuntrapuram village.



7. Thereafter the respondent police informed him about the secret information and explained his right under Section 50 of NDPS Act, but he consented for search by the police party and to that effect he has also signed in the consent letter. Thereafter on search, the driver of the said vehicle/ A3 was found in possession of 72 pockets of ganja, each containing 2 kgs which comes 144 kgs of ganja and also seized Rs.90000/- and OPPO mobile phone from him.

8. Thereafter the respondent police drawn 500 gms of ganja as samples from the bags. Further on enquiry the said Naina Mohamed confessed that based on the information given by one Mani who is arrayed as A4 the vehicle was arranged by this petitioner and the first accused went to Andhra and purchased Ganja for the purpose of exporting the same to Srilanka. After taking samples, the said Naina Mohamed was arrested and brought to the police station. Thereafter the present case was registered against five persons in Crime No.12 of 2020 at about 16.30 hrs for the offence punishable under Sections 8(c)r/w.20(b)(ii)(C)29(1) and 25 of NDPS Act, 1985. Subsequently arrested accused was produced before the learned Judicial Magistrate on 23.06.2020 and he was remanded to judicial custody. Further on the same day itself, the seized contraband was produced before the learned Magistrate and formally returned.

9. Later it was produced before the learned District and Special Sessions Judge (EC& NDPS Act Cases) Court, Pudukottai in RPR No.70 of 2020 dated 15.07.2020, thereby the requirements of all mandatory provisions were strictly followed in accordance with the NDPS Act. Based on the confession given by the third accused, the petitioner has been arrayed as A1. As per A3's confession, A3 and A4 are acting drivers. During his financial crisis A3 approached A4 and borrowed Rs.1 lakh cash as hand loan. At that time A4 informed A3 once we indulged in illegal transportation of ganja, our entire problem will be solved. Subsequently as per the instructions of A4, he went to Andhra by offending vehicle which was arranged by the petitioner and A1 for purchasing ganja.

10. He further submitted that insofar as the petitioner is concerned, she only provided finance for purchasing contraband. He further submitted that in the place of occurrence, while verifying the call detail records which was traced from the petitioner's mobile signal, the location of the petitioner was identified remotely close to the place of occurrence on the same day when the third accused was arrested who was found in illegal possession of 144 kgs of ganja. There is ample of evidence to connect the petitioner in this crime. Therefore the petitioner failed to fulfil the twin conditions as contemplated under Section 37 of NDPS Act since it is a commercial quantity, prayed for dismissal of the petitioner.

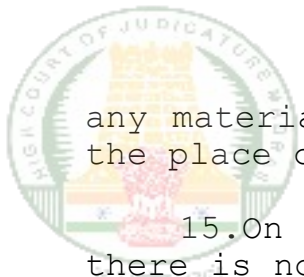


11. The case of prosecution is that on 22.06.2020 at about 12.00 hrs when the respondent was in duty, received a phone call from the informer that some persons are going to transport ganja illegally to Srilanka via Pudukottai through the White Colour xylo car bearing Reg. No. TN 22 CH 4986 and he also assured that he will identify the vehicle to him. Immediately he reduced the said information in writing and intimated the said message to the immediate superior and necessary permission was obtained. Thereafter he went to the spot, pointed out by the informer along with police team. Thereafter the respondent police commenced vehicle check up near the bus stop of Pudukottai Milk farm (pal Pannai) and at about 16.30 hrs the secret informer identified the vehicle bearing Reg. No. TN 22 CH 4986 which comes from Trichy road towards Pudukottai and he left the place.

12. Immediately the respondent police intercepted the vehicle and introduced themselves to the driver by showing the identity card. On enquiry the driver informed that his name was Naina Mohamed/3rd accused and native of Senkuntrapuram village. Thereafter the respondent police informed the secret information to him and explained his right under Section 50 of NDPS Act, but he consented for search by the police party to that effect he has also signed in the consent letter. Thereafter on search, the driver of the said vehicle/ A3 was found in possession 72 pockets of ganja each containing 2 kgs which comes 144 kgs of ganja and also seized Rs.90000/- and OPPO mobile phone from him.

13. Thereafter the respondent police has drawn 500 gms of ganja as samples from the bags. Further on enquiry the said Naina Mohamed confessed that based on the information given by one Mani who is arrayed as A4 the vehicle arranged by this petitioner and the first accused went to Andhra and purchased Ganja for the purpose of exporting the same to Srilanka. After taking samples the said Naina Mohamed was arrested and brought to the police station. Thereafter the present case was registered against five persons in Crime No.12 of 2020 at about 16.30 hrs for the offence punishable under Sections 8(c) r/w. 20(b) (ii) (C) 29(1) and 25 of NDPS Act, 1985.

14. There are totally five accused in this case and the petitioner herein is arrayed as A2. Admittedly the petitioner was not present in the place of occurrence and only on the confession statement of A3, this petitioner has been implicated as accused in this case. She happens to be the step mother of the first accused and even according to the crux of complaint, she only gave finance to purchase contraband weighing 144 Kgs of ganja from Andhra. Infact the first accused father of one Ayyapillai is a habitual offender and committing similar type of offences, Therefore the petitioner has also played a role in the ganja business. Though the respondent police traced the call details and found the location of the



any materials to show that the petitioner was very much present in the place of occurrence.

15. On perusal of the record except the confession of the A3, there is no material available on record to implicate the petitioner in the crime. The prosecution now relied on the confession of A2 to connect the petitioner with the crime. Mere confession of the co-accused is not being a substantive piece of evidence, is wholly insufficient to sustain any finding of guilt.

16. Further the Honourable Supreme Court in ***Crl. A.No.296 of 2014 (Mohammed Fasrin Vs. State)*** held that the confession of the co-accused is of no material value in the absence of any other substantive evidence. When other than the confession statements (one of the co-accused and other of the accused), the prosecution had gathered no evidence to link the accused with the commission of crime. Therefore the confession statement of the co-accused is not sufficient to convict the petitioner herein as per the twin condition as contemplated under Section 37 of NDPS Act. There is no *prima facie* case as against the petitioner and where the possibility of conviction is bleak. Therefore this Court is of the considered view that petitioner fulfilled one of the twin conditions. Admittedly the petitioner has no bad antecedent and she is not involved in any other case. Hence, this Court is inclined to grant bail to the petitioner subject to the following conditions:

17. Accordingly, the petitioner is ordered to be released on bail on her executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two blood sureties each for a like sum to the satisfaction of the Additional District and Sessions Court, Special Court for EC and NDPS Act Cases, Pudukottai

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity

ii) the petitioner shall report before the respondent police daily at 10.30 a.m and 1.30 p.m., until further orders.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].



vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
22/12/2020

/ TRUE COPY /

WEB COPY

/ /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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(SPECIAL COURT FOR EC AND NDPS ACT CASES),
PUDUKOTTAI.
- 2.THE INSPECTOR OF POLICE,
NIB-CID, SIVAGANGAI,
SIVAGANGAI DISTRICT.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON (FEMALE),
TIRUCHIRAPALLI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.11308 of 2020
Date :22/12/2020

AAV
TK/PN/SAR.3/23.12.2020/6P/5C