



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 22/12/2020

PRESENT

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

CRL OP(MD) No.14929 of 2020

Vijay

... Petitioner/Accused No.5

Vs

The State rep. by
The Inspector of Police,
Cumbum North Police Station,
Theni District.
(Crime No.909/2020).

... Respondent/Complainant

For Petitioner : Mr.M.Lingadurai,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

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

PRAYER :-

For Bail in Crime No.909 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 16.06.2020 for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C), 25 and 29(1) of NDPS Act and Section 269 of IPC on the file of the respondent police seeks bail.

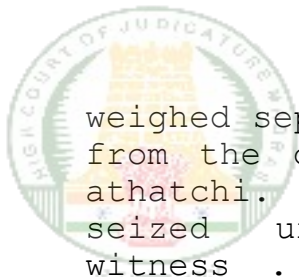
2. The case of the prosecution is that on 16.06.2020 at about 06.00 hrs the Sub Inspector of police attached to the respondent police received a secret information from the informant based on which while they were on duty at Kattuvapallivasal road, Cumbum at about 07.00 hrs a white colour Tata Indica Car bearing Reg.No. TN 60 E 2841 and a two wheeler bearing Reg. No.TN 60 V 0419) was intercepted and on enquired. After following the procedure laid down under Section 50 of the NDPS Act at about 9.30 hrs, A1 took two gunny bags weighing 23 kgs of Kanja from the car and produced before the respondent police. The same were recovered and thereafter



the accused persons were arrested along with contraband and brought to the police station.

3. The learned counsel for the petitioner would submit that there are totally five accused in this case and the petitioner herein is arrayed as A5. He would also submit that on earlier occasion the learned Government Advocate(Criminal Side) wrongly submitted that the contraband was recovered from this petitioner. Even according to the case of prosecution while A1 to A4 were travelling in a car they were intercepted by the respondent police and they were found in possession of contraband in the car and the petitioner herein was standing near his two wheeler. Except the presence of the fifth accused near the car there is absolutely no material available to connect the petitioner with A1 to A4 and nothing was recovered from this petitioner. Further he also produced the CCTV footage and submitted that at 7.30 hrs the jurisdiction police came to the house of the petitioner and arrested him whereas now according to the respondent only A1 to A4 were in the cae and the contraband was recovered from him, hence he sought for bail.

4. The learned Government Advocate(Criminal Side) filed a counter and stated that on 16.06.2020 at about 06.00 hrs the secret informer appeared before the respondent and gave an information about the illegal transportation of ganja. The Sub Inspector of Police recorded the information under section 42 of the NDPS Act and forwarded the same to his immediate superior namely the Inspector of Police and after getting suitable orders from his superior he along with police party at about 06.45 a.m., went to Kattupallivasal road (near New Bye pass road) and commenced vehicle check up. At that time the police party intercepted the TATA indica car bearing Reg. No. TN 60 V 0419. On enquiry of the persons inside the car they identified themselves as Amaithikannan, Amaresan, Sivanesh, Petchiammal, and the rider of the two wheeler were identified as Vijay and the pillion rider was identified as Pandeswaran @ idli Muniyandi. Further the police party informed them that suspect presence of ganja in the car and two wheeler and explained their right under Section 50 of NDPS Act. For which they consented for search by the police party and to that effect consent letter was prepared and after explaining the contents of the same signatures were obtained from them individually at about 8.30 am., in the presence of police witnesses. At that time the sixth accused pushed down the police party and ran into the bushes and escaped from the police party. After obtaining consent letter for search, the accused Sivanesh took two white colour plastic gunny bags from the offending var and produced before the police party. On search of the two white colour gunny bags, the police party found presence of ganja. Thereafter the accused Sivanesh voluntarily made confession statement and the same was recorded in the presence of police witnesses. In the confession statement the accused has stated that the ganja was purchased by the husband of petchiammal namely Aiyar



weighed separately and measured as 12kg and 11kg. Samples were drawn from the contraband for chemical analysis under sealed cover and athatchi. The remaining contraband and the offending vehicle were seized under athatchi at 12.00 pm., in the presence of police witness. After explaining the reasons for arrest the accused persons were arrested and they were brought to the respondent police station along with seized contraband and other material as and a case in Crime No. 909 of 2020 was registered on 16.06.2020. Further the petitioner is also involved in Crime No.439 of 2020 on the file of the Cumbam North Police Station under Section 209 of IPC and also another case in Crime No. 38 of 2020 of the file of the Mudaliarpur Police Station under the NDPS Act.

5. According to the petitioner he was present in his friend's house and relied on the CCTV footage, which alleged to be an image. Admissibility of the CCTV footage can be decided only during the trial and the same cannot be considered at the time of considering bail. Further it is also revealed that the petitioner is arrayed as A5 who is none other than the brother-in-law of A6. Further the petitioner is also involved in two previous cases, in which one case is under the NDPS Act. 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 petitioner fails to satisfy the twin test as contemplated under Section 37 of the NDPS Act, the petitioner is not entitled for bail, hence this Court is not inclined to grant bail to the petitioner.

6. In the result, the petition stands dismissed.

sd/-

22/12/2020

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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,
CENTRAL PRISON,

<https://hcservices.mca.gov.in/hcservices/>



2. THE INSPECTOR OF POLICE,
CUMBUM NORTH POLICE STATION,
THENI DISTRICT.

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

ORDER

IN

CRL OP(MD) No.14929 of 2020

Date :22/12/2020

AAV

SRS/KV/SAR-I/20.01.2021/4P/4C