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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20/01/2020

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.14703 of 2019

Jeyakumar

... Petitioner/Accused No.2

Vs

State represented through
The Inspector of Police,
NIB - CID, Police Station,
Ramanathapuram,
Crime No.8/2019.

... Respondent/Defacto Complainant

For Petitioner : M/s.T.Antony Arul Raj,
Advocate.

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

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

PRAYER :-

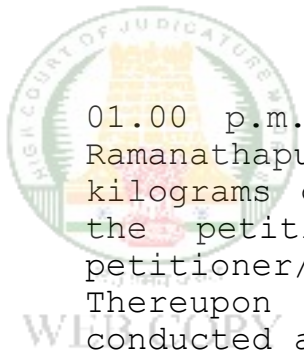
For Bail in Crime No. 8 of 2019 on the file of the respondent police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner is in custody since 06.02.2019 for the offences under Sections 8(c), 20(b)(ii)(c), 25, 28 and 29(1) of Narcotics Drugs and Psychotropic Substances Act, 1985, in Crime No.8 of 2019, on the file of the respondent police. Hence, he seeks bail.

3. The case of the prosecution is that they received reliable information that a large quantity of Ganja is secretly kept in a shed in Ariyaman beach. The information was received at around



01.00 p.m. on 06.02.2019 by the Inspector of Police, NIB CID, Ramanathapuram. Thereupon, they visited the spot and recovered 196 kilograms of Ganja from the farm house that admittedly belongs to the petitioner/Jeyakumar. According to the respondent, the petitioner/Jeyakumar was present along with one Kumarappa. Thereupon Crime No.8 of 2019 was registered. Investigation was conducted and final report was filed before the Special Court for EC Act and NDPS Act Cases, Pudukkottai. Cognizance of the offences was taken and the case is now pending trial in C.C.No.57 of 2019.

4. The petitioner has taken out this bail petition by contending that he has nothing to do with the crime in question and that he has been falsely implicated.

5. The petitioner filed an affidavit before this Court contending that on 05.02.2019 at about 8.20 p.m., he received a whatsapp video from an unknown person from a mobile bearing No.7395812861. The video indicated that the contraband was kept in the petitioner's empty syntax tank at his farm house. Later he also received a threatening call from a mobile bearing No.8248858918. The petitioner states that he called back and he was told that unless he coughs up a sum of Rs.1,00,000/- he would be implicated. The petitioner is aged about 64 years. After spending a sleepless night, the petitioner is said to have called one Raji Sethupathi who is said to be his relative and also a local dignitary. The petitioner wanted the mobile number of the police officer of the local police station (Uchipulli). The said Raji Sethupathi had texted the mobile number of one Mr.Edward, Sub Inspector of Police (9498102936). Thereupon the petitioner contacted Mr.Edward, the Sub Inspector of Police. The petitioner claims that Mr.Edward and himself went to the farm house of the petitioner and even diligent search of the premises did not yield any contraband. They gave up the search and Mr.Edward told him that he will intimate NIB CID, Ramnathapuram. Thereupon, a team of officials from NIB CID came and according to the petitioner, he fully cooperated. The contraband in question was later recovered from the petitioner's shed. This is the stand taken by the petitioner in his affidavit dated 23.10.2019.

6. It is relevant to note her that by then the final report had already been filed and the case had been taken on file. The petitioner's counsel pointed out that nothing stated before this Court was new and that he taken the very same stand before the Special Court also while moving his bail petition.

7. Interestingly, the respondent filed a counter affidavit totally denying the petitioner's stand. The petitioner claims that he received a whatsapp video and threatening call from two different mobile numbers on 05.02.2019 were dismissed as cock and bull story. However, in paragraph 7 of the counter affidavit dated 25.10.2019, it has been mentioned by the Inspector of Police, NIB CID that

<https://hccases.courts.gov.in/hccases/>



attachi. Since the petitioner's counsel strongly insisted that this Court should not go by the denial taken in the counter affidavit, I directed the investigating officer to file a petition for further investigation under Section 173(8) of Cr.P.C., before the Court below for the purpose of obtaining forensic report.

8. Such an application was later filed by the investigating officer and after getting a direction from the Court below, the petitioner's mobile phone was sent for forensic analysis.

9. The Deputy Director, Computer Forensic Division, Forensic Sciences Department, Chennai-4 vide Letter No.CF216 of 2019 dated 06.01.2020 has confirmed the stand of the petitioner. The petitioner did receive the whatsapp video as well as the mobile phone call from the numbers mentioned by him in his affidavit dated 22.10.2019. Interestingly, the cell number (7395812861) belongs to Palani who has been proclaimed as an independent witness in the counter affidavit filed by the Inspector of Police, NIB CID on 25.10.2019.

10. In this case, Palani had sent whatsapp video in which the contraband in question is shown. Sending of the whatsapp video from the mobile phone of Palani was on 05.02.2019. According to the prosecution, they received secret information only on 06.02.2019. FIR itself came to be registered only at 14.45 hours on 06.02.2019 while secret information was received by them at 13.00 hours. But then this Palani is strangely shown as independent witness in the attachi and the recovery mahazer.

11. If the petitioner had actually committed the crime in question, I see no reason as to why he should have contacted the local Sub Inspector of Police. The forensic report confirms that the petitioner had contacted Mr.Edward, local Sub Inspector of Police in the morning of 06.02.2019. It was again brought out that the petitioner got the cell number of Mr.Edward from Raji Sethupathi who is admittedly the petitioner's relative and who is a local political leader.

12. I cannot lose sight of the fact that the petitioner is a person aged about 64 years. He received a threatening call during the night hours on 05.02.2019. The learned Government Advocate (Crl. Side) states that nothing stopped the petitioner from rushing to the police station immediately with the said whatsapp vide. But then one cannot predict what the reaction of a particular person should be in a particular situation.

13. Taking note of the age of the petitioner, it is possible that he was in a confused state of mind and after getting up in the morning after spending a sleepless night he thought it fit to



next. His relative guided the petitioner correctly. He asked the petitioner to reach out to the local Sub Inspector of Police. The petitioner had exactly done the same.

14. To a direct question posed by this Court to Mr.Ragupathi, the Deputy Superintendent of Police, NIB CID, Madurai, who is also in charge of NIB CID, Ramanathapuram, he was fair enough to state when he enquired Mr.Edward, Mr.Edward admitted to him that he did receive a call from the petitioner herein. It is further seen that the Mr.Edward also accompanied the petitioner to undertake a quick search of the petitioner's premises.

15. Thus, there are reasonable grounds to conclude that the petitioner is not likely to have committed the offences in question. Thus the first limb of Section 37 of NDPS Act stands satisfied.

16. I asked the learned Government Advocate (Crl. Side) as to whether the petitioner is having any previous case. The petitioner is not having any previous case under NDPS Act. He has stated that the case registered against him under Immoral Traffic Act is still pending trial. Therefore, I am of the view that the petitioner is not likely to commit any offence while being out on bail.

17. Since both the tests set out under Section 37 of NDPS Act are satisfied, I am inclined to enlarge the petitioner on bail with certain conditions. Accordingly, the petitioner is ordered to be released on bail, subject to the following conditions;

(i) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the Additional District and Sessions Court and Special Court for EC and NDPS Act Cases, Pudukkottai.

(ii) the petitioner is directed to appear before the respondent police as and when required for the interrogation.

(iii) 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].

18. I have to necessarily express my serious displeasure over the investigation in this case. It has been convincingly



brought out that Palani one of the witnesses had prior knowledge of the storage of the contraband in the premises in question. Mr.Ragupathi, Deputy Superintendent of Police, NIB CID, Madurai in charge of NIB CID, Ramanathapuram is directed to conduct further investigation and file supplementary final report at the earliest.

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE
AND SPECIAL COURT FOR EC AND NDPS ACT,
PUDUKKOTTAI
- 2 THE INSPECTOR OF POLICE
NIB CID, RAMANATHAPURAM,
3. MR.RAGUPATHI,
DEPUTY SUPERINTENDENT OF POLICE,
NIB CID, MADURAI
- 4 THE OFFICER INCHARGE
SUB JAIL, RAMANATHAPURAM
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-927 dated 20/01/2020)

ORDER
IN
CRL OP(MD) No.14703 of 2019
Date :20/01/2020

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ES/VR/SAR 3/21.01.2020/5P/7C