

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.1806 of 2021

M.Shanmuga Priya

... Petitioner

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Chennai
(NCB.F.No.48/1/11/2019-NCB/MDS)

... Respondent

Prayer:

Criminal Original Petition filed under Section 439 Cr.P.C.,
praying to enlarge the petitioner on bail in connection with CC.No.17 of
2020 on the file of the Special Judge, II Additional Special Court for
Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.S.Ashok Kumar
for Mr.V.Johnson Yuvaraj

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor for NCB cases

ORDER

The petitioner, who was arrested and remanded to judicial custody by the respondent on 10.08.2019 for the alleged offences under Sec. 8(c) r/w 20(b)(ii)(C), 28 and 29 of the Narcotics and Psychotropic Substances Act, seeks bail.

2. The case of the prosecution is that the respondent received information on 09.08.2019, and on the basis of the specific information, a team of NCB officers went to Egmore Railway Station and procured two independent witnesses, and intercepted the petitioner and allegedly upon enquiry by the NCB officers, the petitioner revealed that she was in possession of 62 Kgs of ganja. The bags of the accused were taken to Platform No. 5 and after explaining Sec. 50 of the NDPS Act, on the request of the Accused person, the NCB officials opened the bags one by one and it was found that the bags contained "brownish green colour dry leaves". The same was tested in a "DD Kit" which answered positive for Ganja and on the spot itself samples were drawn, which were packed, sealed and marked. On weighing, the total quantity of the ganja was

62.600 Kgs. Seizure Mahazaar proceedings were drawn on the spot and the entire mahazaar proceedings were completed at 13.30 hours on 10.08.2019. Thereafter, the petitioner was taken to the Office of the Respondent situated at Office of the Zonal Director, Narcotics Control Bureau, Plot No. FD2, 2nd Main Road, 3rd Avenue, TNHB Layout, Ayappakkam, Chennai 600 077 and on the next day .i.e., 11.08.2019, the petitioner was arrested after allegedly recording her confession statement under Sec. 67 of the NDPS Act.

3. The further case of the prosecution is that the petitioner is said to have allegedly received the contraband from a person at Vishakapattinam, which is concealingly packed in trolley bags and travel bags with the instruction to deliver the bags to a person named Vanitha in Pudukottai. The respondent police filed final report in the form of complaint on 30.01.2020.

4. The learned counsel for the petitioner would submit that the petitioner never had conscious possession of the contraband and she is a victim of circumstances. The initial burden is on the prosecution to

prove that the petitioner is in conscious possession and to prove the same beyond reasonable doubt and not on preponderance of probabilities. The respondent has not followed mandatory procedures as contemplated under Section 50 of NDPS Act. The contraband was not seized before the Gazetted Officer or Magistrate as stipulated under Section 50 of NDPS Act. Further, the joint communication made under Section 50 of NDPS Act is illegal and the petitioner was not searched by female as mandated by the provision of NDPS Act and it is also repeatedly held by the Hon'ble Supreme Court of India. As far as the petitioner is concerned, the search and recovery was completed on 10.08.2019 at about 13.30 hours at Egmore Railway Station, Chennai. Thereafter she was taken to the respondents' office at Ayappakkam, Chennai and recorded confession statement. On the next day, she was shown to arrest in the present case. Therefore, the statement recorded from the petitioner under Section 67 of NDPS Act cannot be voluntary one and the same is inadmissible in evidence. The sample also was not taken as per the direction issued by the Hon'ble Supreme Court of India.

4.1 He further submitted that as per the case of the prosecution, seized contraband was "brownish green colour dry leaves" weighing 62.600 kgs and as such the definition of ganja is completely differ from the contraband seized from the petitioner. He further submitted that now our country has voted for removal of cannabis and its resin as most dangerous drug from schedule IV of '1961 convention'. Based on the majority of votes by all the countries along with our country, the "United Nations Commission on Narcotic Drugs" deleted cannabis and its resin as most dangerous drug from the convention. Since NDPS Act was enacted by India for controlling drug abuse and implementing its obligations under international conventions, therefore as per the latest development of deleting the contraband by the Unites States wherein India also supported the deletion would have direct impact on the prevailing law of India with regards to Section 37 of NDPS Act. Therefore, it is not applicable to the petitioner. Further, he submitted that the petitioner is suffering from infraumbilical incisional hernia and she is taking treatment repeatedly in Stanley Government Hospital. Further her male child is suffering from congenital heart disease and requires regular treatment and follow up.

Further after laying charge sheet, now the trial is pending. In support of his contention, he also relied upon the following judgments:

(i) Tofan Sing Vs. State of Tamil Nadu reported in
2020 SCC Online SC 882

(ii) Noor Aga Vs. State of Punjab and another
reported in (2008) 16 SCC 417

(iii) State of Rajasthan Vs. Parmanand & Another
reported in (2014) 5 SCC 345

(iv) State of Punjab Vs. Baldev Sing
reported in (1999) 2 SCC 172

(v) Union of India Vs. Mohanlal and another
reported in (2016) 3 SCC 379

(vi) Bholu Singh Vs. State of Punjab
reported in (2011) 11 SCC 653

(vii) Danraj Vs. State of Tamil Nadu

in Crl.A.No.319 of 2012

(viii) Trilok Chand Vs. State of Himachal Pradesh
reported in (2020) 10 SCC 763

(ix) Nemi Chand Vs. State of Rajasthan

reported in (2018) 17 SCC 448

5. Per contra, the Special Public Prosecutor appearing for the respondent submitted that the petitioner is the resident of Pudukottai. She along with another are indulging in trafficking of Ganja. They were in possession of 62.600 kgs of ganja and they were coming from Visakapatnam to Pudukottai by train. On special information, NCB team conducted enquiry with the petitioner and found contraband from their possession. After completing mahazar proceedings, they were summoned to the Office for further enquiry. Their voluntary confession statements were recorded under Section 67 of NDPS Act. He further submitted that the provision of Section 50 of NDPS Act was duly followed and accordingly search was conducted by the Officers with witnesses. The seized contraband is commercial quantity. Hence, Section 37 of NDPS Act attracts as against the petitioner. She has to satisfy the twin conditions of Section 37 of NDPS Act that there are reasonable grounds for believing that they are not guilty of such offence and that they are not likely to commit any offence while on bail. Here, the petitioner failed to satisfy the twin conditions as contemplated under Section 37 of NDPS Act. Therefore, this

Court repeatedly dismissed the bail petition to the petitioner herein. Insofar as the health ground is concerned, the petitioner was treated at Government Hospital on 19.10.2019 and thereafter she was discharged on 24.10.2019. Further she is also entitled to avail medical facilities in the prison and at any Government Hospital based on the reference or recommendation of the medical officer attached with the Central Prison for Women. Therefore, he prayed for dismissal of the bail petition.

6. Heard Mr.S.Ashok Kumar, the learned counsel for the petitioner and Mr.N.P.Kumar, Special Public Prosecutor for NCB cases appearing for the respondent.

7. The learned counsel for the petitioner raised the following grounds for grant of bail.

(i) The petitioner suffered with infraumbilical incisional hernia and her male child is suffering from congenital heart disease and as such she requires regular treatment and follow up .

(ii) The petitioner was arrested and remanded to judicial custody on 10.08.2019. The respondent did not follow the procedure as contemplated under Section 50 of NDPS Act. The petitioner was taken to the respondent's Office and recorded her statement in front of police officials. Therefore, it is not voluntary one and as such it is inadmissible.

(iii) India has voted removing the cannabis and its resin as most dangerous drug from schedule IV of '1961 convention'. Based on the majority of votes by worldwide countries along with India, 'United Nations Commission on Narcotic Drugs' deleted the cannabis and its resin as most dangerous drug from the convention. Therefore, bar under Section 37 of NDPS Act is not applicable to the petitioner.

8. In support of his contention, he relied upon various judgments. All the judgments relied upon by the petitioner are held after trial. The grounds raised by the petitioner can be considered only during the trial by let in evidence. Now the respondent completed investigation and filed final report and the trial is pending in CC.No.17 of 2020 on the file of the Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

9. On secret information, the respondent went to Egmore Railway Station with two independent witnesses and intercepted the petitioner along with other accused. The petitioner and another were found in possession of contraband weighing 62.600 kgs of ganja. Thereafter they completed mahazar proceedings and she was taken to respondent's office. She had given her voluntary confession statement under Section 67 of NDPS Act and thereafter she was arrested and remanded to judicial custody. Though the petitioner took specific stand that she was not in conscious possession of contraband, nothing to show that she was not in conscious possession of contraband. That apart, it can be considered before the trial court by let in evidence. Admittedly, the contraband was seized under the seat and it is also admitted by the petitioner that the contraband belong to herself and another. Therefore, the respondent duly followed the procedure contemplated under Section 50 of NDPS Act.

10. Insofar as removal of cannabis and its resin from schedule IV of '1961 convention' by the United Nations Commission on Narcotic Drugs is concerned, even till today no amendment came into force in the NDPS Act by removing the cannabis and its resin from schedule IV

as most dangerous drug. The petitioner also failed to satisfy the twin conditions as contemplated under Section 37 of NDPS Act, since the seized contraband is commercial quantity. Therefore, there is absolutely no change of circumstances for considering the bail petition of the petitioner herein.

11. In view of the above discussion, this criminal original petition is dismissed. However, the petitioner is at liberty to raise all the above grounds before the trial court.

02.03.2021

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Intelligence Officer,
Narcotics Control Bureau,
Chennai

2. The Public Prosecutor,
Madras High Court,
Chennai.

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G.K.ILANTHIRAIYAN, J

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