

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Ninth day of April Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.6685 of 2021

C.C.No. 123/2018

(IN RR8/2018 IN NCB F.NO.48/1/16/2018-NCB/MDS/U/S 8(C)R/W 20(B)(II)C,
28 & 29 OF THE NDPS ACT 1985)

(ON THE FILE OF THE COURT OF THE I ADDITIONAL SPECIAL JUDGE FOR NDPS
ACT CASES, CHENNAI)

S.MUTHURAJA

[PETITIONER / ACCUSED]

Vs

UNION OF INDIA

REP.BY INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI-77.

[RESPONDENT]

For Petitioner : M/S.G.ILAMURUGU Advocate

For Respondent : MR.N.P.KUMAR,
Special Public Prosecutor for NCB cases

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 08.05.2018 for the offence under Sections 8 (c) r/w 20 (b) (ii) (c) and 28, 29 of NDPS Act 1985 in Crime No.123 of 2018 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner along with one Abdul Rajak had illegally transported 425.820 Kilograms of Ganja in his Ashok Leyland Lorry bearing Registration No.TN 67 F 4579 without any valid license. Hence, the case is registered against the petitioner.

3. The learned counsel appearing for the petitioner would submit that the petitioner is the owner cum driver of his lorry and he is carrying transport business throughout India with valid permit. He further submitted that on the alleged date of occurrence the petitioner has carrying Alumina Hydrate which was transported from Andhra Pradesh to Tuticorin District with valid consignment receipt at this juncture without the knowledge of the petitioner the alleged Kanja has been loaded by the consignor. He is all along carried his transport business without any blemish of records for the past several years. Therefore, he has not committed any offence as alleged. He is under incarceration from 08.05.2018 and he has been in prison for the no fault committed by him. He is the only bread winner of his family. Due to the incarceration of the petitioner the family is in peril. He is a law abiding citizen and an innocent. Hence, he prays for grant of bail to the petitioner.

4. The learned Special Public Prosecutor for NCB cases would submit that the petitioner in his voluntary statement had stated that he and Abdul Rajak were approached by some persons and offered Rs.7,000/- if they take and delivery the 14 bags of ganja total weight is 425.820 Kgs. to one Pandey at Trichy, they accepted and taken the ganja in the lorry and admitted his guilt and he was arrested and remanded to judicial custody on 08.05.2018. Hence, he vehemently opposed to grant bail to the petitioner.

5. The learned counsel for the petitioner further submitted that this Court already directed the trial court to complete the trial within a stipulated time. Even then, the trial court did not follow the directions issued by this Court. In fact, PW1 was examined and the trial is keep on adjourned for cross examination of PW1 for the past 1 ½ years. In the meantime, due to covid-19 pandemic circumstances, the trial court could not able to complete the trial as directed by this Court. He also relied upon the judgment of the Hon'ble Apex Court in the case of **Sujit Tiwari Vs. State of Gujarat** in Crl.A.No.1897 of 2019 dated 28.01.2020, wherein it is held as follows:

"11. At this stage, without going into the merits, we feel that the case of the appellant herein is totally different from the other accused. Reasonable possibility is there that he may be acquitted. He has been behind bars since his arrest on 04.08.2017 i.e. for more than 2 years and he is a young man aged about 25 years. He is a B.Tech Graduate. Therefore, under facts and circumstances of this case we feel that this is a fit case where the appellant is entitled to bail because there is a possibility that he was unaware of the illegal activities of his brother and the other crew members. The case of the appellant is different from that of all the other accused, whether it be the Master of the ship, the crew members or the persons who introduced the Master to the prospective buyers and the prospective buyers."

6. The Hon'ble Supreme Court of India held that if there is any reasonable chance for acquittal, the accused may be released on bail. Whereas in the case on hand, the petitioner is the main accused and he directly involved in the crime and he was in possession of 14 bags of ganja weighing 425.820 kg, which is a commercial quantity and as such there is bar under Section 37 of NDPS Act. Therefore, the above case is not applicable to the case on hand.

7. Though this Court issued specific direction to complete the trial within a stipulated time, due to pandemic circumstances, the trial court could not able to complete the trial within the time stipulated by this Court. Further considering that there is no change of circumstances in this case, this Court is not inclined to grant bail to the petitioner.

8. Accordingly, this criminal original petition is dismissed.

-sd/-
29/04/2021

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE I ADDITIONAL SPSECIAL
JUDGE FOR NDPS ACT, CASES, CHENNAI.

2 THE SPECIAL PUBLIC PROSECUTOR
FOR NCB CASES, HIGH COURT, CHENNAI.

3 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT, CHENNAI-77.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI-66

+1 CC to M/S.G.ILAMURUGU Advocate on payment of necessary charges SR NO. 5593

CRL OP.6685/2021

Date :29/04/2021

RG.05.05.2021