

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eleventh day of January Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice C.V. KARTHIKEYAN

CRIMINAL ORIGINAL PETITION No.12377 of 2020

PACHIYAPPAN

[PETITIONER / ACCUSED]

Vs

STATE REPRESENTED BY
INSPECTOR OF POLICE,
NIB CID POLICE STATION,
KANCHIPURAM,
CR.NO.6/2019.

[RESPONDENT]

For Petitioner : M/S. MR.S.AROKIA MANIRAJ Advocate

For Respondent : M/S T.P.SAVITHA, Govt. Advocate
O/O PUBLIC PROSECUTOR

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The Petitioner seeks bail for the alleged offences under Section 8(c) r/w Section 20(b), ii(c), 25 and 29(i)(a) of NDPS Act., in Crime No.6 of 2019. The Petitioner was remanded on 20.10.2019.

2.Heard Mr.S.Arokia Maniraj, learned counsel, who had been appointed through the Legal Service Authority on behalf of the Petitioner and Mrs.T.P.Savitha, learned Government Advocate on the Criminal Side.

3.The case of the prosecution is that on 15.02.2019 based on information, the Respondent Police conducted a vehicle check up at Nellore - Chennai Main Road. Near Yelavur Toll Gate at 09.00 A.M a car bearing No.TN.03-L-1146 was on the way from Nellore to Chennai. The vehicle was stopped by the Respondent. One person ran away from the place. The Petitioner was inside the car. The Respondent Police searched the car and seized six plastic bag each containing contraband of 25 Kg. The samples were taken in each and every bag. Thereafter, a confession was also recorded and a case was registered in Crime No.6 of 2019 under Section 8 (c) r/w Sections 20(b), (ii) (c) 25 and 29 (i) (a) of NDPS Act.

4.The main thrust of the bail petition is that the Respondent has not followed the mandatory provision of Section 42, 50, 52A and 57 of NDPS Act.

5.It is seen that in the present case the contraband was recovered from the bags as seen from the search memo which has been filed as a document. The Petitioner was given an option whether he should be searched in the presence of the Judicial Magistrate or in the presence of a Gazetted Officer. The Petitioner however stated that the search could be conducted in the very same place itself. Thereafter, the contraband was recovered from six plastic bags. They were not recovered from the person of the Petitioner herein. In this connection, I refer to the judgment of the Hon'ble Supreme Court in (2020) 10 SCC 740, Rajesh Dhiman V. State of Himachal Pradesh, wherein, the Hon'ble Supreme Court had again drawn a distinction with respect to the search of a person and search of the bag containing contraband and held that safeguards for search of a person do not extend to his bag or other article being carried by him.

6.It is also seen that earlier bail petitions have been dismissed. Further, in view of the bar under Section 37 of the NDPS Act, I hold that it may not be appropriate to grant any relief to the Petitioner. Accordingly, the petition is dismissed.

7.The Court places its deep appreciation for Mr.S.Arokia Maniraj, who had taken up the case on being appointed as Legal Aid Counsel on behalf of the Petitioner, in view of the continuous absence of the learned counsel for the Petitioner.

-sd/-

11/01/2021

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 SUPERINTENDENT,
CENTRAL PRISON, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
NIB CID POLICE STATION, KANCHIPURAM.

CC to M/S. M.JEGADEESH PANDIAN Advocate on payment of necessary charges

CRL OP.12377/2020

Date :11/01/2021

RVR 19/01/2021

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