

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03..03..2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.20222 of 2020

1.Silambarasan  
2.Prabhakaran

... Petitioners

-Versus-

The State Rep. by  
Inspector of Police,  
NIB CID Police Station,  
Coimbatore.  
[Crime No.35 of 2020]

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioners on bail in Crime No. 35 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr. M.Lingadurai

For Respondent : Mr.M. Prabavathi,  
APP

ORDER

**(The case has been heard through video conference)**

The Petitioners, who were arrested and remanded to judicial custody on 12.03.2020 in connection with a case registered in Crime No.35 of 2020 on the file of the respondent for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c) and 25 of The Narcotic Drugs and Psychotropic Substances Act, 1985, seek bail.

2. There are two accused in this case and the petitioners have been arrayed A1 and A2 respectively. The case of the prosecution is that on 11.03.2020, on a secret information that Ganja is being transported in a car, after getting permission from the Deputy Superintendent of Police the respondent police mounted surveillance in their area. On suspicion when the respondent police intercepted a car and informed the persons in the car that they have reasonable belief that that ganja is being transported in the car. After informing them about the right of the right of the accused to be searched in the presence of a Magistrate or a Gazetted Officer, the respondent police made search, the respondent police found 22 KGs of ganja smuggled in the car. The contraband was seized and the petitioners were arrested by following due legal process.

3. The learned counsel appearing for the petitioner would submit that the petitioners are innocent and some body had concealed the ganja packet in their car without their knowledge. The petitioners have got no bad antecedents. He would further submit that respondent police did not follow the mandatory requirements before conducting the search and seizure and thereby violated the mandatory procedures contemplated under the NDPS Act.

4. The learned counsel would further submit that the petitioners have been incarceration for more than 360 days. Now, the matter is posted for trial on 08.03.2021 and their relatives and friends are unable to engage a counsel to defend the case effectively and if the petitioners released on bail, they would be able to defend the case effectively by engaging a lawyer.

5. The learned Additional Public Prosecutor would strongly oppose the bail petition stating that the petitioners were found in possession of 22 Kgs of Ganja in their car which is a commercial quantity and the contraband was seized after following the mandatory requirements. On completion of investigation, charge sheet was filed and the case has been taken cognizance by the learned Special Judge in C.C.No.70 of 2020. The case is posted to 08.03.2021 for trial. If the petitioners are released at this stage, there is likelihood of tampering with the witnesses and there is also likelihood of absconding and fleeing away from taking trial. Therefore, she prayed for dismissal of the bail petition.

6. I have considered the rival submissions carefully.

7. The allegation is that the petitioner were found in possession of ganja in excess of commercial quantity. Thus, the provisions of Section 37 of NDPS Act will apply. However, from the records placed before this court, this court is unable to come to a conclusion on the issue whether the respondent followed the mandatory requirements before conducting search and seizure of contraband.

8. Admittedly, the petitioners are in judicial custody for nearly one year. They have got no bad antecedents. The contraband seized is just above the commercial quantity. The case is now posted for trial. All the witnesses are official witnesses and therefore, there is very little chance of tampering with witnesses. Considering these circumstances and in order to give an opportunity to the petitioners to defend their case effectively by engaging a lawyer of their own choice, this court is inclined to grant bail, however, with stringent conditions.

(a) Accordingly, the petitioners are ordered to be released on bail on each of them executing 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 learned Additional District Judge / Special Court for Essential Commodities Act Cases, Coimbatore, and on further conditions that:

(b) the sureties shall affix their photographs and Left

Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioners shall appear before the trial court at 10.30 a.m. on all working days without fail until further orders and cooperate with the trial.

(d) the petitioners shall not commit any offences of similar nature;

(e) the petitioners shall not abscond either during investigation or trial;

(f) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Judge/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners have been released on bail by the learned Magistrate/Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-  
03/03/2021

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 ADDITIONAL DISTRICT JUDGE  
SPECIAL COURT FOR ESSENTIAL COMMODITIES  
ACT CASES, COIMBATORE.

2 THE PUBLIC PROSECUTOR,  
HIGH COURT, MADRAS.

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

3 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE.

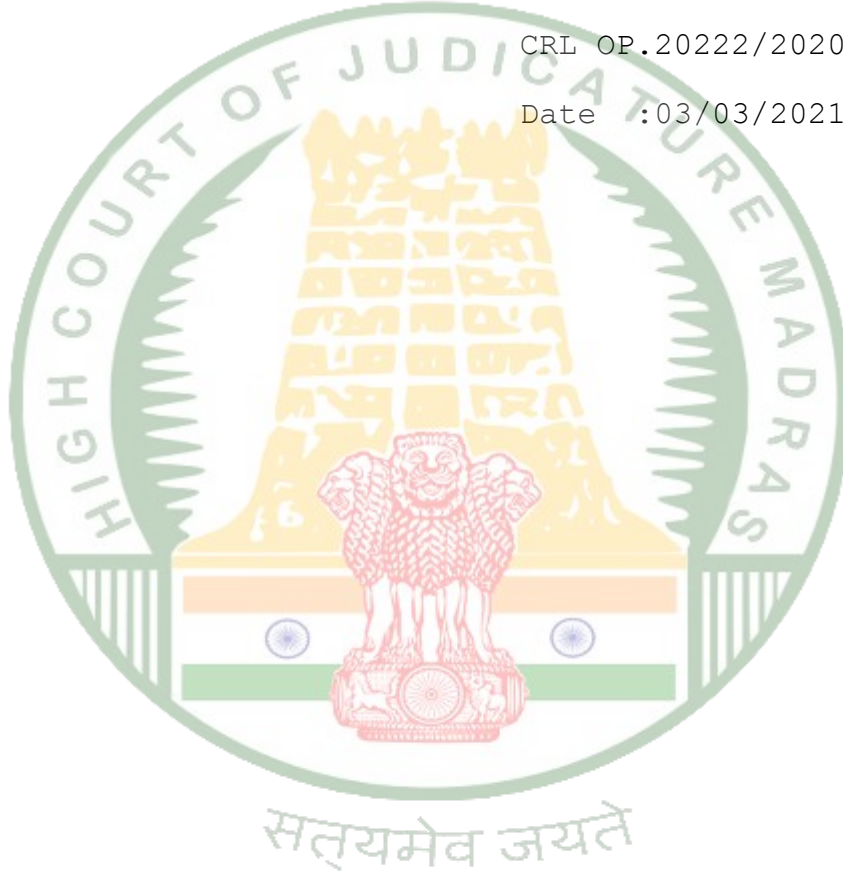
4 THE INSPECTOR OF POLICE,  
NIB CID, POLICE STATION,  
COIMBATORE.

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

CRL OP.20222/2020

Date :03/03/2021

MN-04/03/2021



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