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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 25.02.2021

Pronounced on: 01.03.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) . No.1464 of 2021

1.Magendran
2.Dhanapal

... Petitioners/Accused No.1 and 2

Vs

State Represented by,
The Inspector of Police,
N.I.B.C.I.D Police Station,
Nagapattinam,
Cr No. 15/2020.

... Respondent/Complainant

For Petitioners : Mr.M.R.Sivasubramanian,
Advocate.

For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No.15/2020 on the file of the respondent Police

ORDER : The Court made the following order :-

The petitioners/A1 and A2 were arrested and remanded to judicial custody on 22.07.2020 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(c), 29(1) and 25 of NDPS Act,1985 on the file of the respondent police seek bail.

2.The case of the prosecution is that on 21.07.2020 at about 11.30 hrs, secret information received that the ganja is being smuggled from Pushpavanam Village to Srilanka, the Coastal Security guard police who were keeping watch there found two persons carrying two bags to the boat. At that time they were surrounded and enquired, after completing all procedural formalities the persons and the boat were searched and in the boat they found two bags of



ganja, weighing 36 kgs. Thereafter the boat and the ganja was seized. Subsequently the seized contraband and the accused were handed over the NIBCID Police, Nagapattinam. Hence the complaint.

3. The learned counsel for the petitioners would submit that the petitioners have been falsely implicated in this case and all the witnesses are only official witness in this case. He would also submit that mandatory provisions have not been followed in this case and the contraband were not seized from the petitioners, the samples were not taken in time. He would also submit that the respondent police has not followed the mandatory provisions as per sections 42 (ii), 50 and 57 of NDPS Act. He would also submit that the petitioners have been falsely implicated in this case and they are in judicial custody from 22.07.2020, hence he seeks bail.

4. The learned Government Advocate (Crl.Side) filed a counter and submitted that both the petitioners were arrested and given confession. From their confession it is revealed that two more persons namely A3/K.Subash Chandra Bose and A4/Kumar had come in TATA sumo Car and handed over the contraband to the second petitioner herein in the presence of the first petitioner. Further the same was concealed by the first and second accused in sea shore for about three days. On 22.07.2020 the petitioners having conversed with A3/Subash Chandra Bose and thereafter on getting instructions have indulged in this crime. In this case A3 and A4 are still absconding. The mandatory provisions under Sections 42, 50, 52(A) and 57 of the NDPS Act are duly complied with. He would also submit that the petitioners are kingpin in the case and they were trafficking ganja to Srilanka through Vedaranyam and the quantity seized in this case falls under the category of commercial quantity. Further the petitioners have not made a ground satisfying Section 37 of the NDPS Act. He would also submit that investigation in this case is completed and charge sheet has been filed before the Additional District and Sessions Judge/Special Judge under E.C.Act cases, Thanjavur and the same is pending trial in C.C.No.04 of 2021, hence he strongly opposed to grant bail to the petitioners.

5. It is seen that the contraband possessed by the petitioners falls under commercial quantity. All the grounds raised by the petitioners can be considered only during trial not at the stage of granting bail. In the light of Section 37 of the NDPS Act the petitioners failed to satisfy the twin test as contemplated under Section 37 of the NDPS Act. The petitioners are not entitled for bail. Further two of the accused are still absconding. Investigation in this case completed and charge sheet has been filed before the Additional District and Sessions Judge/Special Judge under E.C.Act cases, Thanjavur and the same is pending trial in C.C.No.04 of 2021, hence this Court is not inclined to grant bail to the petitioners.



6. In the result, the petition stands dismissed.

sd/-
01/03/2021

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SUPERINTENDENT, CENTRAL PRISON,
TRICHY
2. THE INSPECTOR OF POLICE,
N.I.B.C.I.D POLICE STATION,
NAGAPATTINAM,
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.1464 of 2021
Date : 01/03/2021

aav
PK/JC/SAR-III/04.03.2021 : 3P/4C