



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

Date : 24/06/2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.7492 of 2021

Senthil Kumar

... Petitioner/Accused No.2

Vs

State represented by
The Inspector of Police,
Ramanathapuram Town Police Station,
Ramanathapuram District
Crime No. 13/2021.

... Respondent/Complainant

For Petitioner : Mr.S.Kanakarajan,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

PRAYER :- For bail in Crime No. 13 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested on 24.01.2021 for the offences punishable under Section 8(c)r/w.20(b)(ii)(C) and 25 of NDPS Act in Crime No.13 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 24.01.2021 at about 4.00 pm., when the police party was engaged in vehicle check up at Achuthanvayal check post, Ramanathapuram, in NH 49 road, at about 4.30 p.m., the vehicle bearing Reg. No. TN 12 A 4344 had come from east side. They stopped the vehicle and on search they could smell the presence of ganja in the vehicle driven by the Vijayakumar, Senthil Kumar, Kakanaiya and Prasath were occupants in the car. When enquired they informed that they were in illegal possession of ganja. They were explained about their right to be searched in the presence of Magistrate or any authorized officer. The accused persons responded by saying that they may be searched by the police themselves. Immediately search was conducted in the presence of Mrs. Vaithagi and Selvarani, Village Administrative Officers who were summoned. On search they found 15 bags each containing 2kg of ganja, totalling 30 kgs of ganja. They also found 150 kgs of ganja in 5 bags and another 10 kgs of ganja in one polythene bag,



totalling 160 kgs of ganja. They do not have any license for possessing ganja. They also informed that ganja was brought to be handed over to Navazkhan, Vasimkhan, Antony, Dhanaraj for being illegally transported to Srilanka. Therefore this case came to be registered.

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3. The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the respondent police has not followed the mandatory procedures under Section 42 and 43 of NDPS Act. In this regard he also relied upon the judgment of the Honourable Supreme Court in the case of **Boota Singh & others -vs- State of Haryana in Criminal Appeal No.421 of 2021**. It has been observed in this case that total non-compliance of Section 42 is impermissible. The rigor of Section 42 may get lessened in situations dealt with in the conclusion drawn by this Court in **Karnail Singh** but in no case, total non-compliance of Section 42 can be accepted. He would further submit that the petitioner is in judicial custody from 24.01.2021, hence he seeks bail.

4. The learned Additional Public Prosecutor appearing for the respondent police opposed this petition on the ground that the petitioner along with other accused said to have illegally possessed and transported 160kgs of ganja which falls under the category of commercial quantity. He would further submit that the case was registered on 24.01.2021 and investigation is not yet completed.

5. The case of the prosecution is that the petitioner along with other accused were found in illegal possession and transportation of ganja to Srilanka, which falls under the category of commercial quantity. With regard to the submission of the learned counsel for the petitioner that the respondent police has not followed the mandatory procedure, the Honourable Supreme Court in **Karnail Singh Vs. State of Haryana** reported in (2009)8 Supreme Court Cases 539, has held as follows:

"If the statutory provisions under [Section 41\(2\)](#) and [42\(2\)](#) of the Act of writing down the information is interpreted as a mandatory provision, it will disable the haste of an emergency situation and may turn out to be in vain with regard to the criminal search and seizure. These provisions should not be misused by the wrongdoers/offenders as a major ground for acquittal. Consequently, these provisions should be taken as discretionary measure which should check the misuse of the Act rather than providing an escape to the hardened drug-peddlers. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of [section 42](#) of the Act. Whether there is adequate or substantial compliance with [section 42](#) or not



is a question of fact to be decided in each case. The above position got strengthened with the amendment to **section 42** by Act 9 of 2001."

It is seen from this judgment that the compliance of the procedures under Section 42 of the NDPS Act whether adequate or substantial, it is a question that has to be decided in each and every case

6. Similarly when considering the compliance of the procedures under Section 50 of the NDPS Act, the Honourable Supreme Court in **Vijaysinh Chandubha Jadeja Vs. State of Gujarat** reported in **2011(1) SCC 609**, has held as follows:

"Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of **Section 50** had been met, is a matter of trial"

7. Further in **State of Punjab Vs. Baldev Singh** reported in **(1999)6 Supreme Court Cases 172**, the Honourable Supreme Court has held as follows:

"The question whether or not the safeguards provided in **Section 50** were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of **Section 50**, and particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial."

8. Thus compliance or non-compliance of the mandatory procedures cannot be looked into at the time of granting bail and it is a matter for trial. The accused persons are entitled for bail if they satisfy the twin conditions as laid down under Section 37 of the NDPS Act. In the case on hand the petitioner along with other accused were found in illegal possession and transportation of 160kgs ganja to Srilanka and he has not satisfied the twin conditions as laid down under Section 37 of the NDPS Act. Further there is *prima facie* case for prosecuting the petitioner along with other accused for possessing 160 kgs of ganja for illegally transporting to Srilanka.

9. Hence the bail petition stands dismissed.

sd/-

24/06/2021

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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 OFFICER INCHARGE,
SUB JAIL, RAMANATHAPURAM.
- 2.THE INSPECTOR OF POLICE,
RAMANATHAPURAM TOWN POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.7492 of 2021
Date :24/06/2021

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AE/MNR/SAR-III/01.07.2021/4P/4C