



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/11/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.13953 of 2021

Chellapandi

.. Petitioner /Petitioner/
Accused No.4

Vs.

State Represented by
The Inpsector of Police
Thideernagar Police Station,
Madurai City,
Crime No.194 of 2021.

... Respondent / Respondent /
Complainant

For Petitioner : Mr.M.Jegdeesh Pandian
Advocate.

For Respondent : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
Assisted by Mr.T.Senthilkumar
Additional Public Prosecutor

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

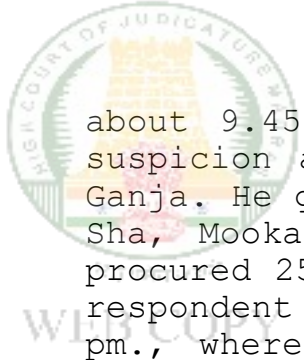
PRAYER :-

For the Bail in the Crime No.194/2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/accused No.4, who was arrested and remanded to judicial custody on 09.06.2021 for the offence punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act,1985, in Crime No.194 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 09.06.2021, at about 9.00 a.m., the Sub Inspector of Police had received a secret information from the informant about the movement of Ganja at Madurai, they recorded the same and obtained necessary permission and proceeded to the place of occurence, near Mariamman Temple, Thalaivirichan Lane, Melaperumal Mesthiri Street, Madurai Town, at



about 9.45 am., and they found a person, namely, Muneeswaran, on suspicion and they enquired him. He was in possession of 1 Kg of Ganja. He gave a confession statement that he along with one Ibrahim Sha, Mookan Bala, Chellapandi and Sudharson @ Vellaiyan went and procured 25 Kgs of Ganja from Cumbum. Based on the confession, the respondent went to Bodi Line House, Madurai Town, at about 12.30 pm., where they have arrested the other persons, namely, Ibrahim Sha, Sivabalakrishnan @ Mookan Bala, Chellapandi and Sudharson @ Vellaiyan. From those accused, the respondent police seized 23 Kgs of Ganja and arrested at about 1.45 pm. The confession statement was recorded at about 2.00 pm., and registered a case at about 3.45 pm.

3. The learned counsel for the petitioner submits that this petitioner is arrayed as Accused No.4, based on the confession statement of an accused. He is a Diploma holder in Automobile Engineering. His father, viz., Muniyandi, who was working in Arulmighu Meenakshi Sundareswarar Temple under the H.R & C.E. Department, died on 18.09.2020. The petitioner applied for a job on compassionate grounds and is waiting for the appointment.

4. In the meantime, his classmate and close friend, Jabar Ali was murdered on 16.08.2018. In that case, the police of C1 Police Station, insisted the petitioner, who is the friend of the deceased, to be an eye-witness. The petitioner was not present in the place of occurrence and the petitioner was out of station and he was not aware of the occurrence and therefore, he refused for the same. Since the petitioner has not obliged them, the respondent police foisted a false case against him in Crime No.449 of 2018 for the offences punishable under Sections 392 r/w 397 and 506(ii) I.P.C. The petitioner has aggrieved over the same and has filed an application before the State Human Rights Commission, Chennai, as against the then Inspector of Police and two Head Constables and the same has been numbered as SHRC. No.8146 of 2018 and is still pending. The respondent police was insisting the petitioner to withdraw the same. In that case, the police officers are appearing before the State Human Rights Commission and the case is in the final stage. The case in Crime No.449 of 2018, which has been foisted as against the petitioner, also ended in acquittal. The police officers are facing the complaint before the State Human Rights Commission and insisting the petitioner to withdraw the petition pending against them. The petitioner has refused to withdraw the same and therefore, this case has been foisted as against him.

5. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner further submits that on 09.06.2021, two un-uniformed officials took him in a two wheeler, Bajaj Pulsar bearing Registration No.TN-58-G-1576, at about 11.12 a.m., from his house and they have taken him to the police station and insisted them to withdraw the petition pending on the file of the State Human Rights Commission. Since the petitioner has refused to oblige their demand, this case has been foisted as against him. He further submits that he is having C.C.T.V footages for the same and he has also produced the same.



Apart from that, the learned counsel claims that the C.C.T.V footages of the respondent police would also expose the same.

6. The learned counsel for the petitioner submits that his mother, viz., Latha filed an application for transfer of investigation before this Court in Crl.O.P.(MD)No.10565 of 2021 with a prayer for production of C.C.T.V. footages shot on 09.06.2021 between 11.00 a.m., and 02.00 p.m., of Thideernagar Police Station, as per the judgment of the Hon'ble Apex Court in **Paramvir Singh Soni Vs. Baljit Singh and others** reported in (2020) 1 SCC 184, wherein, the Hon'ble Apex Court issued certain directions to the authorities to install C.C.T.V Cameras in all the Police Stations and also directed to preserve the footages for 18 months.

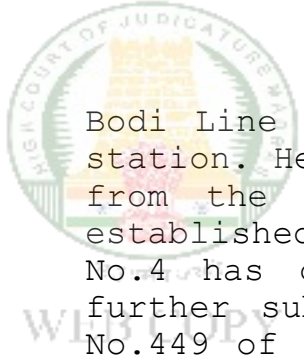
7. Crl.O.P.(MD)No.10565 of 2021 was taken up for hearing, on 04.08.2021, according to the petitioner, to prevent any order to be passed before the Court, in that application, the respondent police hurriedly filed the final report in this case and this case was represented before this Court that the charge sheet was already filed and has also been taken on file as C.C.No.340 of 2021 and the case was also posted for further proceedings, on 13.08.2021. Since it is represented that the final report has also been filed this Court by order, dated 04.08.2021, disposed the Criminal Original Petition filed by the petitioner's mother / Latha, for change of investigation in Crime No.194 of 2021, reserving the rights of the petitioner to raise this ground before the concerned trial Court.

8. Pursuant to this order, the petitioner has also filed an application under Section 91 Cr.P.C. before the Principal Special Sessions Court for EC and NDPS Act Cases, Madurai, in Crl.M.P.No.329 of 2021 and the same is pending before the trial Court.

9. The learned counsel for the petitioner by referring to the above facts, insisted this Court to invoke the power under Section 482 Cr.P.C. and issue a direction under Section 91 Cr.P.C., to produce the footages of C.C.T.V of the respondent police station shot on 09.6.2021 at about 11.00 a.m to 02.00 p.m., He further submits that the contraband, which is said to have been seized on 09.06.2021, was produced before the concerned Court after a much delay.

10. The learned counsel for the petitioner has also relied on the photographs in the typed set of papers, to substantiate his arguments and also produced a C.D.

11. The learned State Public Prosecutor submits that the petitioner/accused No.4 was taken from his house at Ganga Apartment at Ellis Nagar for enquiry by serious crime squad, on 09.06.2021 around 10.45 am., and on certain reliable information and after enquiry, he was permitted to go around 11.30 a.m, on 09.06.2021. Thereafter, the petitioner has involved in the occurrence and he was arrested along with other accused on 12.30 pm., on 09.06.2021, at



Bodi Line House, Madurai Town, which is 1 Km away from the police station. He further submits that CDT/Tower location details obtained from the service providers seized by the accused have clearly established the link between them and that the petitioner/accused No.4 has contacted Accused No.2 three times on 08.06.2021. He further submits that this petitioner is also an accused in Crime No.449 of 2018 for the offence under Sections 392 r/w 397 and 506 (ii) I.P.C.

12. The learned State Public Prosecutor further submits that though the petitioner has raised various grounds, he has not mentioned all theses grounds, when he was remanded before the Special Court on 09.06.2021.

13. Considering the rival submissions made, this Court directed the respondent police to produce C.C.T.V. footages of the respondent police station for verification, for which, the Inspector of Police submits that C.C.T.V footages would be available only for 9 days to 15 days and those footages shot on 09.06.2021, cannot be produced at this stage.

14. The petitioner is facing a charge for the offence under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985, in Crime No.194 of 2021. The allegation as against this petitioner is that he was in possession of 23 Kgs of Ganja, which is a commercial quantity, in nature. As per Section 37 of NDPS Act, the petitioner is not entitled for bail until or otherwise, he satisfies the twin conditions under Section 37 of the NDPS Act, that he is not guilty of the offence and that he will not involve in any other offence.

15. The learned counsel for the petitioner has raised certain grounds that one of his close friends was murdered and the police has insisted him to be an eyewitness for the occurrence. Since the petitioner had refused for the same, he has been foisted with a false complaint. As against the case foisted against him, he filed an application before the State Human Rights Commission, Chennai, in S.H.R.C.No.8146 of 2018 and it is in the final stage. The case of the petitioner is that the police insisted him to withdraw the complaint pending against him in the State Human Rights Commission, Chennai and when the petitioner refused the same, this case has been foisted against him. He further submits that the other case which has been foisted against him in Crime No.449 of 2019 also ended in acquittal. It is the further case of the petitioner that he has been taken from his house on 09.06.2021, at about 11.12 am., and he has produced certain photographs that have been taken from C.C.T.V. Camera and according to the petitioner, he was detained in the police station from 11.00 a.m., to 02.00 p.m., and this case has been foisted as if he has been found in possession of commercial quantity of Ganja at about 12.30 pm., at Bodi Line. The petitioner's mother/Latha has also filed an application for change of investigation and also taken out the application for producing the C.C.T.V footages in the Thideernagar Police Station.



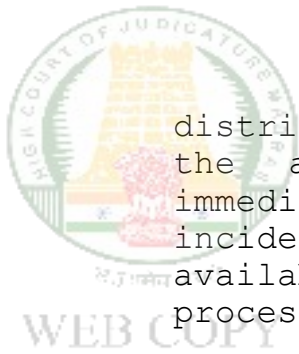
16. According to the petitioner, in order to defeat the application, filed by the petitioner in Crl.O.P.(MD)No.10565 of 2021, the respondent police filed the final report in a hurried manner, on 03.08.2021 itself and based on the representation that the case has been taken cognizance in C.C.No.340 of 2021, the Court has also closed the petition filed by the petitioner, under Section 91 Cr.P.C. Considering this representation, this Court directed the respondent police to produce C.C.T.V. footages. The respondent claims that C.C.T.V., footages would be preserved only for the period of 9 days to 15 days, whereas, the Hon'ble Apex Court, while directing the authorities to install C.C.T.V cameras in the police station has passed an order in the case of Paramvir Singh Soni Vs. Baljit Singh and others reported as (2020)1 SCC 184, wherein, the relevant para of the same reads as under:-

"17. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly

https://hcservices.mca.gov.in/Services/

Provisions 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each



district of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/ Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigating agency in order to further process the complaint made to it.

19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:

- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)
- (vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

20. The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

21. The SLOC and the COB (where applicable) shall give directions to all police stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations / offices of investigative/enforcement agencies about the coverage of the premises concerned by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.



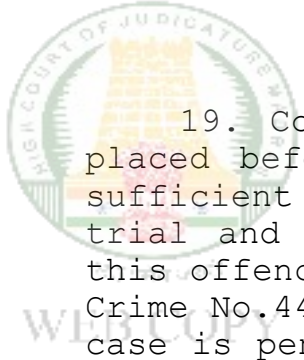
22. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution, and since nothing substantial has been done in this regard for a period of over 2½ years since our first order dated 3-4-2018, the Executive/ Administrative/ police authorities are to implement this order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/ Cabinet Secretary/Home Secretary of each State/Union Territory giving this Court a firm action plan with exact timelines for compliance with today's order. This is to be done within a period of six weeks from today."

(emphasis supplied)

By following the orders of the Hon'ble Apex Court, the High Court of Madhya Pradesh, in a case of **Vicky S/o. Jaipaldas Pariyani Vs. State of Madhya Pradesh**, has also passed an order, to preserve the footages for atleast six months.

17. Pursuant to the orders of the Honourable Supreme Court, the C.C.T.V cameras have been installed in all the police stations, including the respondent police station. It is not the case of the respondent that C.C.T.V. Camera is not working. However, they have taken a stand that the C.C.T.V. footages would be available for a period of 9 to 15 days. This stand taken by the respondent defeats the very object for which the direction has been issued by the Honourable Apex Court. The respondent police in their report has admitted that on scrutiny of the C.C.T.V footages as well as the enquiry, the petitioner/accused No.4 was taken from his house at Ganga Apartment, Ellis Nagar for enquiry by Serious Crime Squad on 09.06.2021 at about 10.45 a.m., and he was enquired in the police station and the petitioner went with the police party on his own and he was permitted to leave at 11.30 am., on 09.06.2021. The occurrence was taken place, at 12.30 pm., whereas, the case of the petitioner is that at that time he was in the custody of the police.

18. The learned counsel for the petitioner has raised a specific plea in Paragraph 14 of the petition that the contraband said to have seized on 09.06.2021, reached the Court with much delay. Though the respondent has filed two reports before this Court on 29.10.2021 and on 01.11.2021, they have not stated as to when the contraband has been produced before the Court, but, they have simply denied the averment of the petitioner. According to the respondent, apart from the confession statement, they have collected the call details of the petitioner and this petitioner had contacted Accused No.2 thrice, on 08.06.2021. The fact remains that the investigation agency has filed the final report, without even ascertaining this fact in the final report.



19. Considering the facts and circumstances and the materials placed before this Court, this Court is satisfied that there are sufficient grounds for the petitioner to be established during the trial and there are materials available that he is not guilty of this offence. A case has been registered against the petitioner, in Crime No.449 of 2018, which was also ended in acquittal, as such, no case is pending against him. Both the requirements of Section 37 of NDPS Act, are fulfilled and therefore, this Court is inclined to grant bail to the petitioner.

20. Accordingly, this Criminal Original Petition is ordered and the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.1,00,000/- (Rupees One Lakh only)** with two sureties each for a like sum to the satisfaction of the Principal Special Court for EC and NDPS Act Cases, Madurai District, and on further condition that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

[b] the petitioner shall appear before the respondent police daily at 10.30 a.m until further orders;

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[d] the petitioner shall not abscond either during investigation or trial;

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

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

Sd/-

02/11/2021

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

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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 JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI DISTRICT.

2. THE INSPECTOR OF POLICE
THIDEERNAGAR POLICE STATION,
MADURAI CITY.

3. THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, MADURAI.

4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL OP (MD) No.13953 of 2021
Date : 02/11/2021

VB/JM/SAR-IV/08.11.2021/9P/5C