



CrI.O.P.No.4926 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 09.03.2022

Pronounced on : 14.03.2022

Coram::

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Criminal Original Petition No.4926 of 2022

1. R.Pechiyammal,  
2. M.Saravanakumar,

... Petitioners/Accused 2 & 5

**/versus/**

The Inspector of Police,  
M-4, Redhills Police Station,  
Chennai.  
(Crime Number: 3886/2020)

... Respondent/Complainant

**Prayer:** This Criminal Original Petition is filed under Section 439 of Cr.P.C.,  
praying to enlarge the petitioners on bail pending trial in C.C.No.107 of 2021 on  
the file of the Special Judge I Additional Special Court for NDPS Act.

For Petitioners : Mr.V.K.Sathiamurthy

For Respondent : Mr.G.V.Kasthuri,  
Additional Public Prosecutor

**ORDER**



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The petitioners are 2<sup>nd</sup> and 5<sup>th</sup> accused in C.C.No.107/2021 pending on the file of Special Court for N.D.P.S cases at Chennai. These two petitioners were arrested on 17/10/2020, in connection with seizure of 400.700 kgs of ganja kept in 13 bags kept concealed in the false cavity of a tanker lorry bearing Registration No.AP-16-TB-0041. The driver of the tanker lorry was arrested on 06/10/2020. These two petitioners and others were arrested on 17/10/2020.

2. The Petition for bail is filed on the ground that they are innocent persons hailing from Theni District whereas, the contraband was alleged to have been seized on 06/10/2020 near M.A.Nagar Toll Gate, Gummidipoondi near Chennai. The F.I.R registered on 06/10/2020 in Crime No.3886 of 2020 was only against the first accused, who was the driver of the tanker lorry. Later, the prosecution has added 5 others as accused one after another based on the statement of the accused. These petitioners were taken into custody on 15/10/2020 from their house without any warrant and kept under illegal custody till 17/10/2020. They were shown arrest after petition sent to Higher Authorities. No recovery of any contraband from their possession. No evidence to show they were involved in ganja transport. Despite the fact that nothing incriminating recovered from them,



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these petitioners were arrested and kept in judicial custody for nearly 17 months.

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3. The Learned Counsel for the petitioners relying upon the Newspaper report about the seizure of ganja published on 07/10/2020 and the photograph showing the first accused and the Covid-19 test report of the petitioners to emphasis that they underwent swab test on 16/10/2020 and got the test report on the same day, submitted that in fact, the petitioners took Covid-19 test on 16/10/2020 and received the report on 17/10/2020. However, the Regional Medical Officer has replied to the RTI enquiry, that the swab test for the petitioners was taken on 17/10/2021 and on the same day report received. This establishes that the respondent after taking the petitioner into illegal custody, had manipulated the date and time of arrest to suit their convenience. Being no way connect with the alleged seizure of ganja from the first accused, pray for bail.

4. To buttress his submissions, the Learned Counsel for the petitioners rely upon the judgment of the Supreme Court in ***Bharat Chaudhary -vs- Union of India*** reported in ***2021 SCC Online SC 1235***.

5. The respondent has filed counter, wherein it is stated that, based on



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specific information, that a person driving the vehicle bearing registration No.AP-16-TB-0041 is transporting ganja clandestinely, surveillance was mounted on 06/10/2020 near M.A.Nagar, Toll Gate, Gummidipondi. At about 15.00 hrs, a tanker lorry came very fast from Gummidipoondi proceeding towards Redhills. The vehicle was stopped and searched and found 13 bags of ganja totally weighing 400.700 kgs in the secret chambers of the tank. Same was seized under mahazar. Based on the confession of A-1 and on examination of the phone call details, the investigation revealed that the first accused had transported the contraband from Anagapalli, Andhra Pradesh as per the direction and monitoring of one Sunder (A-3) to be delivered at Thiruchy to Pechiyammal (A-2), Muthusami (A-4 died), Saravanakumar (A-5) and Ravichandran (A-6).

6. Since A-1 did not deliver the contraband within the expected time, A-2, A-4, A-5 and A-6 came to Chennai on 17/10/2020 in search of the supplier (A-1). When they reached Koyambedu, Sunder (A-3) came to Koyambedu and joined them. These accused were arrested at Koyambedu on 17/10/2020.

7. Narrating the sequence of events as stated above, the Learned



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Additional Public Prosecutor submitted that, these petitioners along with other accused persons conspired to transport illegally 400.700 Kgs of ganja from Andhra Pradesh. They engaged A-1 to transport the contraband concealed in the secret chamber of the tank. The information given by A-1 in his statement lead to trace the other accused, who were involved in the said crime. Since, the quantity is of commercial quantity and the evidence collected discloses the involvement of these petitioner in the crime, final report has been laid on completion of investigation. In the said circumstances, the petitioners are not entitled for bail since they don't satisfy the twin conditions imposed under Section 37 of the N.D.P.S Act.

**8.** Heard the Learned Counsel for the petitioners and the Learned Additional Public Prosecutor for the respondent. Records perused.

**9.** This is a case under NDPS Act and the contraband alleged to have been seized is ganja about 400.700 kgs which is a commercial quantity as per the Act. Once the contraband is of commercial quantity the twin conditions envisaged under section 37 of the N.D.P.S Act, for grant of bail has to be satisfied.



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10. Relying upon the newspaper report, the Covid-19 test report and the complaint about abduction by plain clothes men on 15/10/2020, the Learned Counsel for the petitioner contends that the case is a false case and the petitioners were taken into custody on 15/10/2020 itself from their residence at Theni District and shown arrest as if they were arrested on 17/10/2020 at Koyambedu, Chennai. From 15<sup>th</sup> October 2020 till 17<sup>th</sup> October 2020, they were in fact kept under illegal custody. Further, no incriminating documents or materials recovered from them.

11. In ***Bharat Chaudhary -vs- Union of India*** case cited supra, the apex court has held that,

*“....Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either at the office or at the residence of A-4 at Jaipur, on 16th March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.*



*11. In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh vs-State of Tamil Nadu. The impugned order qua A-4 is, accordingly, quashed and set aside.....”*

**12.** However, this Court is of the firm view that, when the petitioners are charged for conspiracy and the statement of the co-accused implicate these petitioners in the crime, the presumption of culpable state of mind and deemed possession are to be taken as *prima facie* case to prosecute them for offence involving commercial quantity of narcotic drug. Hold that, the petitioners fail to satisfy the twin conditions imposed under Section 37 of the NDPS Act, 1985 to consider the bail petition.

**13.** On perusal of the records indicates that the contraband intercepted



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and seized was meant for the present petitioners and two others. These petitioners have through A-3, had arranged for the transport and delivery of the goods to them. However, before delivery, the respondent have intercepted the vehicle and seized the contraband weighing about 400.700 kgs. The evidence collected during the investigation provides material to convict them, if proved. Further, if the petitioners are released on bail, misuse of the liberty not ruled out.

**14.** The observation made above is confined to the bail application.

Same shall have no influence on the trial Court, for final disposal after trial.

**15.** In the light of the above fact and reasons, this Criminal Original Petition is dismissed.

14.03.2022

Index :Yes/No.  
Speaking order/Non Speaking order

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1. The Special Judge – I, Additional Special Court for NDPS Act, Chennai.
2. The Inspector of Police, M-4, Redhills Police Station, Chennai.
3. The Central Prison, Puzhal, Chennai.
4. The Section Officer, V.R.Section, High Court, Madras.



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**DR.G.JAYACHANDRAN,J.**

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Pre-delivery order made in  
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