



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 07/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.990 of 2022

Harishankar

... Petitioner/Accused No.1

Vs.

State rep.by
The Inspector of Police,
North Town Police Station,
Dindigul District.
(Crime No.20/22).

... Respondent/Complainant

For Petitioner : Mr.Vigneshkumar.M, Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.20 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/Accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C) and 25 of NDPS Act, in Cr.No.20 of 2022, seeks anticipatory bail.

2.The case of the prosecution is that on 06.01.2022 at about 09.30 p.m., when the police party was engaged in preventing the offence relating under the NDPS Act, they found Auto Rickshaw bearing Registration No.TN-57-AA-8398 and Motorcycle bearing Registration No.TN-57-BK-441 coming towards them. These vehicles were driven by A2 and others. On seeing the police party, the accused persons tried to escape. The police only nabbed A2 and A3 along with this petitioner had escaped from the scene. The police on search, found 22.200 kgs of Ganja from the possession of A2. Therefore, the present case came to be registered against the petitioner and the other accused.



3. The learned counsel for the petitioner would submit that the petitioner was not involved in this case and based on the confession statement of the second accused, he has been falsely implicated in this case. He would further submit that the petitioner is not having any previous case under the NDPS Act.

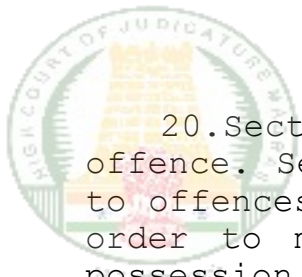
4. The learned Additional Public Prosecutor appearing for the State would submit that on seeing the police party, the petitioner and A3 had escaped from the occurrence place by leaving the Royal Enfield Bike, which is owned by the petitioner, that subsequently, A2 was arrested and the commercial quantity of contraband was recovered from him and that on the basis of the confession given by A2, the other accused were implicated in this case. He would further submit that the petitioner was very much available in the place of occurrence and only on seeing the police party, he had escaped from that place and that the petitioner is not having any previous case under NDPS Act.

5. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Union of India through Narcotics Control Bureau vs. Nawaz Khan** in **Crl.A.No.1043 of 2021** dated 22.09.2021. In the said decision case, a car, in which, the respondent therein was travelling with the other two accused was intercepted and they have recovered two polythene packets hidden under the place where the wiper is connected to the front bonnet of the car and that since the respondent therein has claimed that there was no recovery from him, the High Court has granted bail holding that the twin conditions under Section 37 of NDPS Act get satisfied. When the same was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court has observed as follows:-

"21. In the present case, the High Court while granting bail to the respondent adverted to two circumstances, namely (i) absence of recovery of the contraband from the possession of the respondent and (ii) the wrong name in the endorsement of translation of the statement under Section 67 of the NDPS Act.

22. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In **Madan Lal and Another v. State of Himachal Pradesh**¹⁶ this Court held that

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.



20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

WEB COPY

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. & Remembrancer of Legal (2003) 7 SCC 465* Affairs, *W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52]* to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

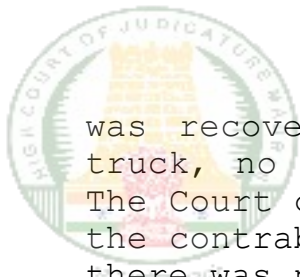
23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.
[...]

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

What amounts to "conscious possession" was also considered in **Dharampal Singh v. State of Punjab**¹⁷, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In **Mohan Lal v. State of Rajasthan**¹⁸, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

23. We have referred to the above precedents to reiterate the governing principles. At this stage of the proceedings, it needs only to be clarified that the trial is to take place in this Court where evidence will be adduced.

24. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in **Union of India v. Rattan Mallik**¹⁹, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin)



was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court."

WEB COPY

6. The above decision is squarely applicable to the case on hand.

7. In the present case, the contraband of 22.200 kgs of Ganja has been seized from the Auto and more importantly, the Auto and the Royal Enfield Bike bearing registration No. TN 57 BK 4411, which accompanied the Auto, were also recovered at the occurrence place.

8. As already pointed out, it is the specific case of the prosecution that the petitioner alone had driven the Royal Enfield Two Wheeler and accompanied the Auto, in which, the contraband was placed and on seeing the Police party, by leaving the two wheeler, he escaped from the scene of occurrence.

9. It is the specific case of the prosecution that the said two wheeler is owned by the petitioner herein. As rightly contended by the learned Additional Public prosecutor, the petitioner has not specifically disputed the ownership of the said vehicle. Moreover, as rightly contended by the learned Additional Public Prosecutor, the petitioner has not offered any reason or explanation as to how and why the two wheeler owned by the petitioner was found at the occurrence place.

10. Considering the above, this Court cannot record a finding that the petitioner is not guilty of such offence. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

11. As already pointed out, even according to the prosecution, the petitioner is not having any previous case under the NDPS Act. Hence, this Court can easily record a finding that there are reasonable grounds to presume that the petitioner is not likely to commit such offence, after coming out on bail. But at the same time, since the first condition is not satisfied and since the twin conditions contemplated under Section 37 of NDPS Act are to be taken as conjunctive, this Court has no other option, but to dismiss the bail application.

12. In the result, this Criminal Original Petition is dismissed.

Sd/-

07/04/2022

/ TRUE COPY /

/ /2022

Sub-Assistant Registrar (C.S.II)
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 INSPECTOR OF POLICE,
NORTH TOWN POLICE STATION,
DINDIGUL DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No.990 of 2022
Date :07/04/2022

SP/JM/SAR II/21/04/2022/5P/3C