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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Reserved on : 29.04.2022

Delivered on : 05.05.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.5921 of 2022

1. Pandiammal

2. Nagaraj

... Petitioners/Accused 7&8

vs.

State represented by,  
The Inspector of Police,  
Ganesh Nagar Police Station,  
Pudhukottai District.  
(Crime No.855 of 2021)

... Respondent/Complainant

For Petitioners: Mr.M.Jegadeesh Pandian, Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,  
Additional Public Prosecutor.

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

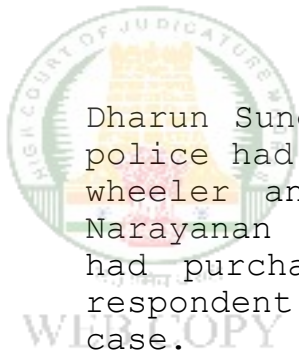
PRAYER :-

For Bail in Crime No.855 of 2021 on the file of the Respondent Police.

**ORDER :** The Court made the following order :-

The petitioners/A.7 & A.8, who were arrested and remanded to judicial custody on 09.12.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) and 25 of Narcotic Drugs and Psychotropic Substances Act, altered into Sections 8(c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, in Crime No.855 of 2021, seek bail.

2.The case of the prosecution is that on 08.12.2021 at about 16.30 hours, on receiving a secret information, the respondent police had inspected the house of the fourth accused Natheem Ali near Om Sakthi Temple, 9<sup>th</sup> street Kamarajapuram and at about 16.45 hours, they found three persons in the two wheeler bearing Registration No. TN-55-BC-0869, namely, Lakshmi Narayanan, Veeramani,



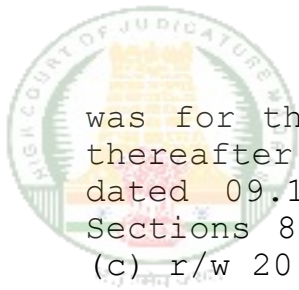
Dharun Sundar and another person namely Natheem Ali, the respondent police had surrounded them and found 1.200 kgs of ganja from the two wheeler and cash of Rs.15,270/-, that the first accused Lakshmi Narayanan gave a voluntary confession statement stating that they had purchased ganja from Selvam and Suresh Kumar and that the respondent police have arrested the accused and registered the above case.

3.It is the further case of the prosecution that on 09.12.2021 at about 16.00 hours, on receipt of secret information, they went to the place back of Machavadi Modern School, Pudhukottai, and found three male and three female, and on enquiry, they have found contraband from the said accused, that 25 kgs of ganja was recovered from the accused Selvam and 10 kgs of ganja was recovered from the first petitioner and that they have also seized 2 two wheelers Bajaj Pulsar bearing Registration No.TN-55-BC-0869 and Bajaj Discover bearing Registration No.TN-60-E-0056.

4.The case of the petitioner is that no ingredients for the offences alleged under NDPS Act are made out against the petitioners, that there are several statutory violations in the entire process of registration of information, registration of the FIR, failure to search the accused in the presence of the Magistrate, the arrest of the accused, alleged recording of confession statement and remand of the petitioner, that the allegations levelled against the petitioners are false and the same is motivated one, that the petitioners are mother and son, that the respondent police had registered three FIRs for single case, each FIR contains different offences and that the very primary registration of the FIR itself is false.

5.The learned counsel for the petitioners would submit that even assuming that the entire allegations are taken to be true, the recovery from the first petitioner is only 10 kgs of ganja and the same would falls between intermedium quantity and not commercial quantity, that therefore Section 37 of NDPS Act would not apply, that there is no recovery from the second petitioner and that the only material available against the second petitioner is the confession, which is a weak piece of evidence. He would further submit that the petitioners did not involve in any such activities as alleged by the prosecution, that the respondent police has not followed the mandatory provisions under Sections 42, 50, 52A and 57 of NDPS Act and that the petitioners are innocents and they have been falsely implicated in the above case.

6.No doubt, as rightly pointed out by the learned counsel for the petitioners, there are three FIRs registered in Crime No.855 of 2021, dated 08.12.2021 and the first one was for the offences under Sections 8(c), 20(b)(ii)(B) and 25 of NDPS Act, the second one was for the offences under Sections 20(b)(ii)(B), 20(b)(ii)(C), 25 and 8



was for the very same offences as that of the second one and that thereafter the respondent police has filed an alteration report dated 09.12.2021, wherein, they have altered the offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act, into Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act.

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7.The learned Additional Public Prosecutor has not offered any reason or explanation for registering the above three FIRs for the very same incident and recovery of 1.200 kgs of ganja. But as rightly contended by the learned Additional Public Prosecutor, that by itself is not a ground for granting bail to the petitioners.

8.The learned Additional Public Prosecutor would submit that on 09.12.2021, 35 kgs of ganja was recovered at the same place, where, the petitioners along with two others were arrested. He would further submit that though 25 kgs of ganja was recovered from the accused Selvam, he was possessing ganja, which was received from the petitioners, who came to that place through two wheeler.

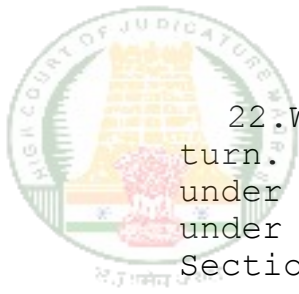
9.Admittedly, the first petitioner is the mother of the second petitioner.

10.As rightly pointed out by the learned Additional Public Prosecutor, two wheeler, which was driven by the second petitioner was also recovered from that place.

11.The learned Additional Public Prosecutor would further submit that the first petitioner is having 9 previous cases under NDPS Act, in which, one case was already disposed of and that the second petitioner is having 4 previous cases under NDPS Act.

12.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**<sup>16</sup> 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.

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**<sup>17</sup>, 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**<sup>18</sup>, 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**<sup>19</sup>, 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."

13. This Court, in batch of cases in **Crl.O.P. (MD) No.5093 of 2021 etc.**, in **Muruganandham and another vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and others**, dated 23.12.2021, has observed as follows:-

"18. Section 37 of the NDPS Act creates bar for grant of bail whenever the recovery is of commercial in



nature and also when the offence is under Section 27-A of the NDPS Act.

Perusal of the provisions of Section 37 of NDPS Act would show that although there is a bar created for grant of bail but a departure can be made in case where the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail, then the Court can always consider the grant of bail in that regard. The Hon'ble Supreme Court in the case of State of **Kerala and another vs. Rajesh and another**, reported in **2020 SCC Online SC 81**, has observed;

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates."

14.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

15.In the case on hand, as already pointed out, the contraband of 35 kgs of ganja was recovered from the place, where, the petitioners and other accused were arrested and the two wheeler, which was driven by the second petitioner was also recovered.

16.As already pointed out, according to the prosecution, the first petitioner is having 8 pending cases under NDPS Act and the second petitioner is having 4 pending cases under NDPS Act.

17.Considering the above, this Court has no hesitation to hold that the petitioners have miserably failed to satisfy the twin



conditions contemplated under Section 37 of NDPS Act and consequently, this Court concludes that the petitioners are not entitled to be enlarged on bail. Hence, this Court is not inclined to grant bail to the petitioners. Accordingly, this Criminal Original Petition is dismissed.

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

CSM

**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  
GANESH NAGAR POLICE STATION,  
PUDHUKOTTAI DISTRICT
- 2 THE SUPERINTENDENT,  
CENTRAL PRISON,  
TRICHY.
- 3 THE OFFICER INCHARGE,  
SPECIAL PRISON FOR WOMEN,  
TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL OP(MD) No.5921 of 2022  
Date :05/05/2022

PKP/SVR/SAR-4/10.05.2022/7P/5C