



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 25.04.2022
PRONOUNCED ON: 29.04.2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.7174 of 2022

1. Dinesh Kumar
2. Jeyam

... Petitioners/Accused Nos.1 & 2

Vs

The State rep.by
The Inspector of Police,
Vikaramangalam Police Station
Madurai.
in Crime No.132/2021.

... Respondent/Complainant

For Petitioner : M/s.PRISCILLA JANCY.K.M.,
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.132 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners/A1 and A2, who were arrested and remanded to judicial custody on 24.10.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c) and 25 of NDPS Act, in Crime No.132 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 24.10.2021, at about 06.00 hours, on receiving secret information about the illegal transportation of Ganja, the respondent police went to Thethupatti Bus Stop in Vikramangalam to Uthapanayakkanur Road and conducted a vehicle checkup, that they intercepted a Honda Shine two wheeler (without bearing registration number), in which, three persons were travelling, that on seeing the police party, one person dropped his gunny bag and escaped from the place and that the respondent police caught hold the remaining two accused, the petitioners herein and recovered 30kgs of Ganja.

3.The petitioners' case is that they have not committed any offence as alleged in the First Information Report, that the first



petitioner is the college going student and the second petitioner is the daily wager, that both the petitioners were no way connected with each other and it is a purely put up case against them, that they are innocents and that they have been falsely implicated in this case.

4. The learned Additional Public Prosecutor would submit that the bike rider and the two pillion riders were holding a bag each, that one of the pillion rider by name, Manikandan by dropping his bag had escaped from the place of occurrence and that both the petitioners were arrested and 30kgs of ganja was recovered at the occurrence place.

5. No doubt, the petitioners' earlier application in Crl.O.P. (MD)No.2926 of 2022 was dismissed by this Court vide order dated 11.03.2022. It is pertinent to note that this Court has dealt with all the points now canvassed in the earlier bail application and this Court, after recording the finding that the petitioner has miserably failed to prove the first condition of Section 37 of NDPS Act, dismissed the petition. In the said order, this Court has referred 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 and the said portion is extracted hereunder:

"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.

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.

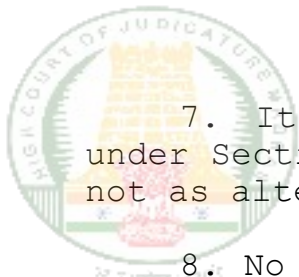
24. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in **Union of India v. Rattan Malik**¹⁹, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which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

6. 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 held 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."



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

8. No doubt, even according to the prosecution, the petitioners are not having any previous case under the NDPS Act. Considering the above, this Court can very well record a finding that the petitioners are not likely to commit such an offence, after coming on bail, but at the same time, since the entire quantity of ganja, which is of commercial quantity, was recovered from the petitioners and that the petitioners were arrested at the occurrence place, this Court cannot record a finding that the petitioners are not guilty of such offence. Moreover, the petitioners have not shown any change in circumstances since the dismissal of the earlier petition. Hence, this Court decides that the petitioners are not entitled to be enlarged on bail.

9. In the result, the Criminal Original Petition is dismissed.

sd/-
29/04/2022

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17/05/2022
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 INSPECTOR OF POLICE,
VIKARAMANGALAM POLICE STATION
MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL JAIL, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.7174 of 2022
Date : 29/04/2022

SA/SVR/SAR.2/17.05.2022/5P/4C