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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 27/07/2022

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP (MD) . Nos.8655, 8662 and 8665 of 2022

Kudapraphath Chand ... Petitioner/Accused No.2
in Crl.O.P.(MD) No.8655 of 2022

Maheswara Rao ... Petitioner/Accused No.4
in Crl.O.P.(MD) No.8662 of 2022

Bathiri Rajendra Prasadh ... Petitioner/Accused No.3
in Crl.O.P.(MD) No.8665 of 2022

Vs

The State rep.by,
The Inspector of Police,
NIBCID Nagapattinam,
Nagapattinam District.
Cr No. 22/2021. ... Respondent/Complainant
in Crl.O.P.(MD) No.8655 of 2022

1.The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
Crime No.1209 of 2021

2.The Inspector of Police,
NIBCID Nagapattinam,
Nagapattinam District.
Cr No. 22/2021. ... Respondents/Complainants
in Crl.O.P.(MD) Nos.8662 and 8665 of 2022

For Petitioners
in all Crl.O.Ps., : Mr.Kumar.T, Advocate.
For Respondents
in all Crl.O.Ps., : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER IN CRL.OP. (MD) NOS.8655 AND 8665 OF 2022 :-

For Bail in Crime Nos. 22 and 1209 of 2021 on the file of the
respondent police.

PRAYER IN CRL.OP. (MD) NO.8662 OF 2022 :-

To enlarge the petitioner on bail in CC.No.18 of 2022 pending
trial on the file of the learned Additional District Judge/Presiding
Officer/Special Court under the Essential Commodities Act,
Thanjavur.



COMMON ORDER : The Court made the following order :-

The petitioners are facing charges under Sections 8(C), r/w 20(b) (ii) (C), 25, 29 (1) of NDPS Act.

2.The case of the prosecution in brief is as follows:-

3.On 10.09.2021, at about 03.30 am., when the police party was on the routine vehicle check up, they found a vehicle bearing Reg.No.AP 31 AQ 9506 and checked the same. At that time, they found 27 bags of Ganja. All the occupants of the aforesaid vehicle, namely Saravanan, Kudapraphap Chand, Bathiri Rajendra Prasad and Maheswara Rao, were arrested and further process of sampling and other things were undertaken.

4.Seeking bail, these petitions have been filed on the ground that the mandatory provisions under Section 50 and 42 (1) of the NDPS Act have not been properly followed. They have not taken the sample from all the bags, but instead, they have taken the sample from one or two bags, which clearly violates the statutory provision.

5.Heard the learned counsel on either side.

6.It is a commercial quantity, measuring about 60 kgs., So, naturally the petitioners have to satisfy the requirement under Section 37 of NDPS Act. Except stating that the sampling was not properly undertaken, only joint possession has been alleged, only based upon the confession statement of the 1st accused, these two persons have been implicated and no previous cases are pending against them, no other ground worth considering to satisfy the requirement of Section 37 of NDPS Act has been made out. Whether there was any statutory violation or not cannot be a matter for consideration in these petitions. It is a matter for trial. Since all the accused persons have been arrested along with contraband, whether they were in conscious position of the same can be a matter for consideration only by the trial Court.

7.Considering the seriousness of the allegation and no ground has been made out by the petitioners to satisfy the requirement under Section 37 of the NDPS Act, these petitions deserve to be dismissed and accordingly, dismissed. However, there shall be a direction to the trial Court to expatiate the trial process and complete the same within a period of 5 months from the date of receipt of a copy of this order.

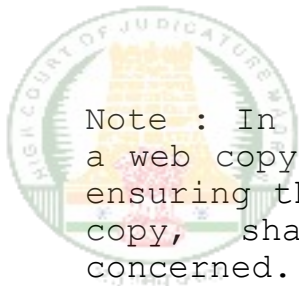
sd/-

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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, 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.

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TO

1. THE ADDITIONAL DISTRICT JUDGE/
PRESIDING OFFICER/SPECIAL COURT
UNDER THE ESSENTIAL COMMODITIES ACT,
THANJAVUR.
2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
3. THE INSPECTOR OF POLICE,
KUMBAKONAM WEST POLICE STATION,
THANJAVUR DISTRICT.
4. THE INSPECTOR OF POLICE,
NIBCID NAGAPATTINAM,
NAGAPATTINAM DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP (MD) . Nos.8655, 8662
and 8665 of 2022

Date : 27/07/2022

RK/VR/SAR-IV/01.08.2022/3P/7C