



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

Date : 19/07/2022

PRESENT

The Hon`ble Mr.Justice **G.ILANGOVA**
CRL OP(MD). No.10772 of 2022

WEB COPY

1. Balamurugan

2. Karuppiyah

... Petitioners/Accused No.2 and 3

Vs

The State rep.by,
The Inspector of Police,
Theni NIB - CID Police Station,
Theni District
(Crime No. 19 of 2022).

... Respondent/Complainant

For Petitioners : Mr.Prabhu.K,
Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No. 19 of 2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners are facing charges under Sections 8 (c) r/w 20(b) (ii) (C), 25 and 29(1) of NDPS Act in Crime No.19 of 2022 on the file of the respondent police.

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

3.On secret information, the police team on 09.05.2022 at about 11.00 pm., went to the place of occurrence along with the police informer. On 10.05.2022 on the early morning at about 00.20 am., suspect was identified by the informer. The suspect was found in possession of a white bag. Search was made and it was found that he was in possession of 14 kgs., of Ganja. He was apprehended and further process was also undertaken as per Rule.

4.On the information furnished by the accused, namely Vijayan, the police team went to the Bodi bus-stand. Two persons were identified by the 1st accused. They were apprehended and on enquiry, they revealed their names as Balamurugan and Karuppiyah, who are the petitioners herein. The 1st petitioner, Balamurugan was the driver of the aforesaid Amni Van bearing Reg.No.KL 03 B 5171. On search, they were found in possession of 12 kgs., of Ganja and further process



was also undertaken. Both the two accused have been arrested on the spot and remanded to judicial custody.

5. Seeking bail, the petitioners/A2 and A3 have moved this petition on the ground that even as per the case of the prosecution, the petitioners were found in possession of 12 kgs., of Ganja, it is only a joint possession. So, if the individual possession is taken into account, it will come below the commercial quantity and Section 52A of the Act has not been properly complied with. The bail application that was moved by the petitioners before the trial Court was also dismissed on the ground that Section 37 of NDPS Act has not been satisfied, finding that it is a commercial quantity and there was a bar.

6. The learned counsel for the petitioners submits that as I mentioned above, joint possession should not be taken into account.

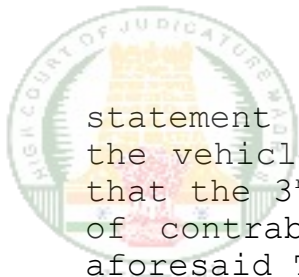
7. The learned Additional Public Prosecutor for the respondent submits that the vehicle, which was driven by the 2nd accused, belongs to the 3rd accused and the accused 2 and 3 were found in possession of Ganja with commercial quantity. He would further submit that as per the judgment of the Hon'ble Supreme Court, whether there was a conscious possession of Ganja or not can be a matter for consideration only during the course of trial.

8. The learned counsel for the petitioners would rely upon the order of this Court made in Crl.O.P.(MD) No.9448 of 2022 (**Mohammed Jalil Khan and another Vs. The Inspector of Police, NIB CID, Chennai**) dated 28.04.2022 for the purpose of argument that only the respective quantity, which was found in possession of individual, must be taken into account and not the joint possession, similarly in Crl.O.P.(MD) Nos.27308 of 2008 and 19541 of 2020.

9. The case of the prosecution is to the effect that it is a habit of the accused to purchase the contraband from Andhra Pradesh and that was stored in the house of the 2nd accused.

10. Reading of the FIR and material show that only from the accused 1 and 2, 12 kgs., of Ganja each have been recovered. Insofar as the 3rd accused is concerned, as I mentioned above, the learned Additional Public Prosecutor submits that the vehicle belongs to the 2nd petitioner/A3. Material has also been collected to show that the concerned Amni Van belongs to the 3rd accused. Even though the contraband has been identified by the 2nd accused, the fact remains that it has been transported through vehicle, which belongs to the 3rd accused and he was also available in the Van during the relevant time.

11. It is further seen that the vehicle was purchased in the name of one Thangapandian. He disowned the ownership and gave a



statement to the effect that he helped the 3rd accused to se the vehicle from Kerala by showing his Aadhar Card. So, it is seen that the 3rd accused has actively involved in the aforesaid transport of contraband by using the vehicle standing in the name of the aforesaid Thangapandian.

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12. In view of the foregoing observations, this Court is of the view that if the petitioners are released on bail, there is every likelihood of tampering the evidence and the petitioners have been arrested and remanded to custody on 10.05.2022 and the investigation is in the initial stage, they are not entitled for bail. This Criminal Original Petition deserves to be dismissed and accordingly, it is dismissed.

sd/-

19/07/2022

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

MM

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 SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 2. THE INSPECTOR OF POLICE,
THENI NIB - CID POLICE STATION,
THENI DISTRICT
 3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S. PRABHU K Advocate SR.No.7395

ORDER

IN

CRL OP(MD) No.10772 of 2022

Date : 19/07/2022

RK/VR/SAR-III/21.07.2022/3P/5C