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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 23/08/2022

PRESENT

The Hon'ble Mr.Justice G.ILANGO VAN

Cr1.OP(MD)No.13117 of 2022

Revathi

... Petitioner/1st Accused

Vs.

The State rep. By
The Inspector of Police,
NIB-CID,
Dindigul,
(Crime No.2 of 2022)

... Respondent/Complainant

For Petitioner : Mr.Na.Manimaran, 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.2 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order:-

The petitioner, who is arrayed as A1 was arrested, on 26/08/2021 and remanded to judicial custody for the alleged offences punishable under sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act, in Crime No.492 of 2021 on the file of the Kannivadi Police and subsequently, it was transferred to the respondent police and assigned Crime No.2 of 2022, seeks bail.

2.The case of the prosecution is that on 26/08/2021 at about 4.30 pm, when the de-facto complainant was on duty, he received secrete information from the police informer that illegal selling of contraband has been taken place near Santhamanickanpatti. On the basis of the above said information, he along with team of police officials went and inspected the place of occurrence. At that time, they suspected three identified persons identified by the police informer and two persons were found. On suspicion, they were apprehended. On search, they revealed their name as Revathi and Vairapandi and subsequent to that, search was undertaken. During the



course of search, they were found in possession of 30 kgs of ganja in one bag and 30 kgs in another bag. Totally 60 kgs of ganja were found. On the basis of the above said search, sample was taken as per the rules. After completing the formalities, the case was registered. The petitioner was arrested on the spot itself and remanded to judicial custody.

3. Seeking bail, this petition came to be filed by the petitioner on the ground that there is a statutory violation committed by the de-facto complainant and he has not registered the information, that was received from the concerned police informer. Not only that, he has also not obtained prior permission from the concerned authorities for continuing the search and further process. It is also contended that section 42 of NDPS Act has been violated and the arrest intimation was not properly served. Even in the FIR and mahazar, the crime number has been mentioned and FIR has been prepared subsequent to that. So the learned counsel appearing for the petitioner says that it is a false case.

4. Further the learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of Boota Singh and others Vs. State of Haryana (LL 2021 SSC 218). According to him, if there is statutory violation, then automatically the petitioner is entitled for bail. According to him, this is sufficient enough to enlarge the petitioner on bail.

5. But the learned Additional Public Prosecutor would submit that the petitioner is having also previous case of similar in nature in Crime No.391 of 2019. The earlier order that has been passed against the co-accused is suffering from factual mistake. So, this cannot be taken advantage by the petitioner.

6. In the light of the above said submission, when we go through the entire CD file, it is seen that the petitioner was arrested on the spot itself along with the contraband. Whether the above said statutory violation is a matter for consideration by the trial court. But when entertaining the bail application, only section 37 of the NDPS Act must be strictly complied with.

7. More-over, when we go through the FIR, on the information received by the de-facto complainant, the case was registered and proceeded to the spot. Whether any permission has been obtained from the concerned authorities or not is a matter for trial. These grounds are not available to the petitioner at this stage. Except stating the above said statutory violation, no other ground worth considering has been made out.

8. In the result, this criminal original petition is **dismissed**.

Sd/-

23/08/2022

/ TRUE COPY /

/09/2022

Sub-Assistant Registrar (C.S.IV)
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,
NIB-CID, DINDIGUL.
2. THE OFFICER INCHARGE,
WOMEN PRISON, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.13117 of 2022
Date :23/08/2022

SP/SVR/SAR IV/06/09/2022/3P/4C