



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 29/09/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.17337 of 2022

K.Bagavathi Nathan,

... Petitioner/Accused No.4

Vs

State Rep.by

The Inspector of Police,

Kottar Police Station, Kottar,

Kanyakumari District.

Cr.No.718/2021.

... Respondent/Complainant

For Petitioner : M/s. Palani Velayutham S, 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. 718 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, who is arrayed as A4 was arrested, on 06.08.2021 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.718 of 2021, on the file of the respondent, seeks bail.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that on secrete information he visited the Vattavilai Garbages area called Royal Garden. On the basis of the information, they went to the occurrence spot and those persons identified by the police informer. They were apprehended and on enquiry, they disclosed their names as Papish, Groswin @ Maria Groswin, Bagavathi Nathan and Rejun. Search was made and they were found in possession of 21 Kgs. of Ganja. Sampling was undertaken as per the procedure and they were arrested on the spot. Based on the above said occurrence, the case was registered.

3.The earlier application was dismissed by this Court on the ground that Section 37 of the NDPS Act has not been complied by the



petitioner. Now new ground has been made by the petitioner in his petition to the effect that even as per the averments made in FIR, samples were not taken from each of the bags, which were alleged to have been found in the place. According to him, this is a violation of the statutory provision, which benefit can be extended to the petitioner.

4.Per contra, the learned Additional Public Prosecutor would submit that whether there is any procedural violation, can be the matter for consideration only by the trial Court. As per the averments made in the FIR, all the accused person were found in possession of 21 Kgs of Ganja and they were also found in making pockets.

5.Close reading of the complaint shows that all the bags were opened and mixed, only after that the weight was taken followed by sampling. Therefore, the contention on the part of the petitioner that sampling was not taken from each of the bags cannot be taken into account at this stage. It is a defence which is available to the petitioner, which can be taken at the time of trial. Apart from that the learned Additional Public Prosecutor would also submit that the petitioner is a habitual offender, having several previous cases at his credit. Some of the cases are disposed and some of the cases are still pending. When such being the antecedents of the petitioner, he cannot be permitted to take advantage of the alleged irregularities hat has been committed during the course of sampling.

6.Now the final report is also made ready and the petitioner is at liberty to move the concerned Court for bail, without approaching this Court repeatedly, when trial is taken up. I find no change of circumstances and new point that has been raised by the petitioner also deserves no consideration and this criminal original petition deserves to be dismissed, accordingly, dismissed.

sd/-

29/09/2022

/ TRUE COPY /

/10/2022

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

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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
KOTTAR POLICE STATION, KOTTAR,
KANYAKUMARI DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.17337 of 2022

Date :29/09/2022

PKP/SVR/SAR /07.10.2022/3P/4C