



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 17.03.2022
Delivered on : 23.03.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.18561 of 2021

Karthick Eswar

... Petitioner/Accused No.1

vs.

The State represented by
The Inspector of Police,
NIBCID,
Trichy Police Station,
Trichy.
(Crime No.15 of 2021)

... Respondent/Complainant

For Petitioner : Mr.J.LAWRENCE,
Advocate.

For Respondent : Mr.E.ANTONY SAHAYA PRABAHAR,
Additional Public Prosecutor.

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

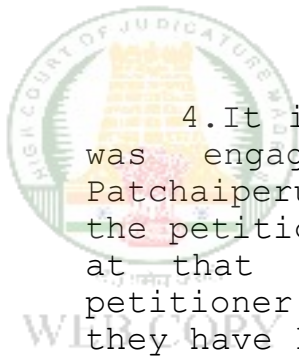
PRAYER :- For Bail in Crime No.15 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.1, who was arrested and remanded to judicial custody on 05.05.2021 for the offences punishable under Sections 8(C) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, in Crime No.15 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 04.05.2021 at about 18.00 hours, on receiving a secret information, the respondent police proceeded to Musiri Road Roundana, Thuraiyur, and intercepted a lorry bearing Registration No.TN-57-AQ-2165, that on seeing the police party, the persons, who were in the lorry, had tried to escape from that place, but the respondent police caught hold of them and that they have arrested all the three persons including the petitioner herein and recovered 66 kgs of Ganja available in three gunny bags.

3.The case of the petitioner is that he is the owner cum driver of the said lorry, that the said lorry is being used for transporting construction materials, that he purchased the said lorry six months prior to the alleged occurrence, that he never indulged in such crime at any point of time and that he has been falsely implicated in the above case.



4.It is the further case of the petitioner that the said lorry was engaged for transportation of bricks from Trichy to Patchaiperalpatti near Thuraiyur and after unloading the bricks, the petitioner was on his returning journey from Theni to Trichy and at that time, two persons having their baggage boarded the petitioner vehicle stating that their vehicle got break down and they have kept their bags inside the lorry, that the petitioner does not have any idea as to what has been kept in their baggage and that when the vehicle reached Musiri Roundana Road, the respondent police conducted the search and only at that time, he came to know that the plastic bags contain brownish green leaves alleged to be Ganja and the same were recovered.

5.The learned counsel for the petitioner would submit that the petitioner was not conscious of possession of contraband and the same has been transported by somebody for delivery to the fourth accused Muruganandam and that the police has also enquired about the factum of transporting bricks by the petitioner in the above said lorry.

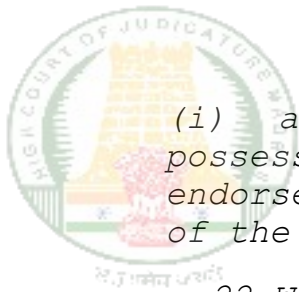
6.The learned Additional Public Prosecutor would submit that commercial quantity of 66 kgs of Ganja was recovered from the lorry, which was, driven by the petitioner and that the petitioner has given a voluntary confession statement, wherein, he has admitted that they have purchased Ganja from Andhra Pradesh and were attempting to deliver to the person as per the direction of the fourth accused.

7.The learned Additional Public Prosecutor would further submit that after completing the investigation, the respondent police has filed a final report and the case was taken on file in C.C.No.75 of 2021 and is pending on the file of the Special Court for EC Act Cases, Pudukkottai.

8.The learned Additional Public Prosecutor would fairly submit that the petitioner is not having any previous cases under NDPS Act, but according to him, since the recovery was from the lorry, in which, the petitioner was travelling along with other two accused, he is not entitled to be enlarged on bail.

9.At this juncture, it is necessary to refer 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. In the said decision case, a car, in which, the respondent therein was travelling with the other two accused was intercepted and they have recovered two polythene packets hidden under the place where the wiper is connected to the front bonnet of the car and that since the respondent therein has claimed that there was no recovery from him, the High Court has granted bail holding that the twin conditions under Section 37 of NDPS Act get satisfied. When the same was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court has observed as follows:-

"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 Affairs 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" uniformly 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."

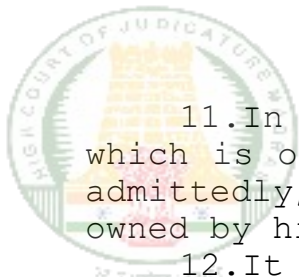
What amounts to "conscious possession" was also considered in **Dharampal Singh v. State of Punjab** ¹⁷, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a 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 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."

10.The above decision is squarely applicable to the case on hand.

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11. In the present case also, the contraband of 66 kgs of Ganja, which is of commercial quantity, has been seized from the lorry and admittedly, the petitioner was driving the said lorry, which is, owned by him.

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

13. Since the petitioner is not having any previous cases under NDPS Act, this Court can easily observe that there are reasonable grounds to presume that the petitioner is not likely to commit any such offence, after coming out on bail, but at the same time, since the contraband was recovered from the lorry, in which, the petitioner was driving the said vehicle, this Court cannot record a finding that the petitioner is not guilty of such offence. Hence, this Court has no other option, but to hold that since the first condition under Section 37 of NDPS Act is not satisfied, the petitioner is not entitled to be enlarged on bail and hence, this petition is liable to be dismissed.

14. In the result, this Criminal Original Petition is dismissed.

sd/-

23/03/2022

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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 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,
NIBCID, TRICHY POLICE STATION, TRICHY.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.LAWRENCE.J Advocate SR.No.2418

ORDER IN

CRL OP(MD) No.18561 of 2021
Date : 23/03/2022

SA/VR/SAR.3/29.03.2022/5P/5C

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