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

Date : 14/02/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD). No.1280 of 2023

Nanthakumar

... Petitioner/Accused NO.2

Vs

The State Rep.by
The Inspector of Police,
Usilampatti Town Police Station,
Madurai District(Crime No.382 of 2022).

... Respondent/Complainant

For Petitioner : M/s.Selvam.J

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

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

PRAYER :-

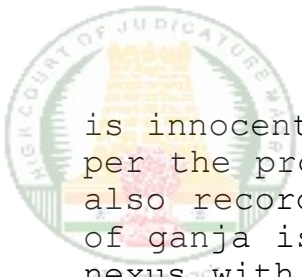
For Bail in Crime No.382 of 2022 on the file of the
respondent police

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to
judicial custody on 22.09.2022 for the offence under Sections 8(C)
r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances
Act, in Crime No.382 of 2022, on the file of the respondent police,
seeks bail.

2.The case of the prosecution is that the petitioner and
other accused were found in joint possession of 22 kgs of Ganja
illegally. Hence, the complaint.

<https://www.mhc.tn.gov.in/judis> 3.The learned counsel appearing for the petitioner would
submit that this is the second petition for bail. The petitioner



is innocent and he has been falsely implicated in the case. Even as per the prosecution, the petitioner was arrested and confession was also recorded from him, based on which, a bag containing 13.750kgs of ganja is stated to have been recovered and the petitioner has no nexus with A1. The contraband which is said to be recovered from the petitioner is not commercial. A bodily search was also conducted on the petitioner and the respondent has seized one mobile phone and cash of Rs.15,000/-. The mandatory of Section 50 of NDPS Act, search and seizure were not followed, thereby vitiating the arrest and recovery of the petitioner. He would submit that there is every chance for the petitioner being acquitted, since he has no bad previous antecedents. The petitioner has complied with the requirements under Section 37 of NDPS Act. The respondent in his counter has admitted that the search was conducted by them. Hence, considering his period of incarceration undergone by him from 22.09.2022, prays to enlarge him on bail.

4.The learned Additional Public Prosecutor appearing for the respondent Police would submit that it is a case where the petitioner and A1 were found together with two bags and A1 was found to be in possession of 8.250 kgs of ganja and the petitioner was found to be in possession of 13.750kgs of ganja, ie., totally 22kgs of ganja, which is a commercial quantity which was seized from them. The petitioner along with other accused was arrested on the same spot and during such time, the petitioner and the other accused have confessed that they have purchased the contraband from A3, one Tamilselvi. He would further submit that the objection with regard to the violation of Section 50 of NDPS Act can be agitated only at the time of trial, as ruled by the Hon'ble Apex Court in the case of **The Union of India through Narcotics Control Bureau, Lucknow /Vs/ Md. Nawaz Khan in Criminal Appeal No. 1043 of 2021**. Further, the petitioner has not satisfied with the conditions under Section 37 of NDPS Act, since he along with the other accused was having conscious possession. Sections 35 and 54 of NDPS Act also operates as against the petitioner. Hence, prays to dismiss the petition.

5.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6.The contraband is recovered in this case is 22kgs. Sections 35 and 54 of the NDPS Act raises the presumption as against the petitioner. With regard to the non-compliance of the mandatory provisions the Hon'ble Apex Court in the case of **Union of India through Narcotics Control Bureau , Lucknow .vs.MD. Nawazkhan** reported in **(2021)10 SCC 100**, has held as follows:

"31. Another submission that has been raised by the counsel for the respondent both before the High Court and this Court is that due to non-compliance of the procedural requirement under [Section 42](#) of the NDPS Act 20, the respondent should be granted bail. [Section 42](#) provides that on the receipt of information of the commission of an offence under the statute, the officer will have to write down the information and send it to a superior officer within 72 hours. It has



been submitted by the respondent that though the information was received by the Zonal Director, the information was put down in writing by an officer who was a part of the team constituted on the receipt of the information. The written information was then sent to the Zonal Director. This Court in *Karnail Singh v. State of Haryana* 21 held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later along with the reason for the delay:

35. [...] (c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.

32. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in *Karnail Singh* (supra) was recently followed by this Court in *Boota Singh v. State of Haryana*

33. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not



complied with is prima facie misplaced. The question is one that should be raised in the course of the trial".

7. Further taking into consideration the facts and submissions of the case, this Court is of the view that the petitioner has not satisfied the conditions as required under section 37 of the NDPS Act for grant of bail.

8. Taking into consideration of the facts and circumstances of the case and considering the nature of the offence, this Court is not inclined to grant bail to the petitioner.

9. In the result, the Criminal Original Petition stands dismissed.

sd/-
14/02/2023

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/ /2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE PRINCIPAL SPECIAL JUDGE FOR EC AND NDPS
ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION, MADURAI
DISTRICT (CRIME NO. 382 OF 2022)

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1CC TO M/S. J. SELVAM, ADVOCATE (SR. NO. 2271)

ORDER
IN
CRL OP (MD) No. 1280 of 2023
Date : 14/02/2023