



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P(MD)No.2092 of 2023

WEB COPY

Suresh Alias Katta Manikandan

...Petitioner/3rd Accused**-vs-**

The State represented by
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
(in Cr.No.94 of 2022)

...Respondent/Complainant

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

PRAYER :- For Bail in Crime No.94 of 2022 on the file of the
Respondent Police.

For Petitioner
For Respondent

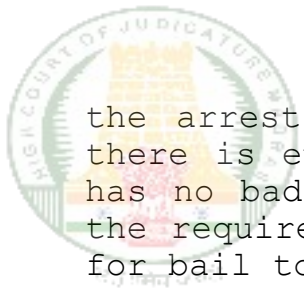
: Mr.R.Vinoth Bharathi
: Mr.T.Senthil Kumar
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 16.02.2022 for the offence under Sections 8(c) r/w 20(b) (ii)(c) of NDPS Act @ 8(c) r/w 20(b) (ii)(c) and 29(1) of NDPS Act in Crime No.94 of 2022 on the file of the respondent Police, seeks bail.

2.The case of the prosecution, as per the de-facto complainant, is that the respondent Police have received the secrete information through their informer and based on which, the respondent police went to the scene of occurrence and on seeing the police, the accused persons try to escape from the scene of occurrence. However, the respondent police secured the accused and on search, it was found that the accused persons having 21 kgs of ganja in a cunny bag. Hence, the case.

3.The learned Counsel for the petitioner would submit that the petitioner is an innocent and the petitioner has been falsely implicated in this case. He would also submit that the petitioner has not committed any offence, as alleged by the prosecution. He would also submit that the petitioner is ready to abide by any stringent conditions, that may be imposed on him. Hence, he would seek for bail to the petitioner. 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. Hence, he would pray for bail to the petitioner.

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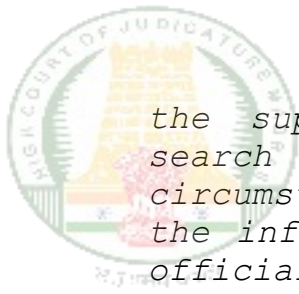
4. The learned Additional Public Prosecutor would submit that the petitioner and other accused was found in possession of 21 kgs of ganja in a cunny bag. He would further submit that the objection with regard to the violation of Section 50 of NDPS Act can be agitated only at the time of trial, as ruled 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 21 kgs. 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 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 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/-

16/02/2023

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/03/2023

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

CMR

TO

- 1 THE OFFICER INCHARGE,
SUB JAIL, NAGERCOIL.
- 2 THE INSPECTOR OF POLICE,
KOTTAR POLICE STATION,
KANYAKUMARI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.2092 of 2023

Date :16/02/2023

SA/SAR.1/14.03.2023/4P/4C