



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 21/06/2023
PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.10255 of 2023

1. Mohamed Nawaz,

2. Mohamed Afnas,

... Petitioners/Accused 7 & 8

Vs

Union of India Through Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai
NCB File No.48/1/02/2020.

... Respondent/Complainant

For Petitioner : M/s.ANAND R,
Advocate.

For Respondent : Mr.C.ARUL VADIVEL @ SEKAR
Special Public Prosecutor

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

PRAYER :- To enlarge the petitioners on bail in C.C.No.370/2021 pending on the file of the learned II Additional Special Court for Trial of NDPS Act Cases, Madurai.

ORDER : The Court made the following order :-

The petitioners/A7 and A8, who is facing trial for the offences punishable under Sections 8(c) r/w 21(c), 22(c), 23(c), 24, 25, 27A, 28 and 29 of NDPS Act, 1985, in C.C.No.370/2021 pending on the file of the learned II Additional Special Court for Trial of NDPS Act Cases, Madurai in NCB File No.48/1/02/2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 25.11.2020, the Superintendent, NCB received an information from the Zonal Director, NCB, Chennai that the Indian Coastal guards has nabbed a fishing boat sailed by Srilankan Nationals with substantial amount of contraband and kept it seized in VAO, Port, Thoothukudi and immediately instructed the above said official to take the case an hand. On 25.11.2020, the said Superintendent, NCB, Madurai has

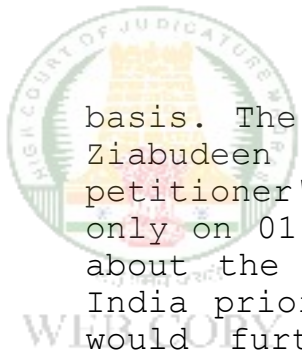


appointed team of official for taking cognizance of the case by the Investigation Officer. On 26.11.2020, at about 11.30 hours, the said officials after reaching the occurrence spot, found the accused persons possessing substantial quantity of illegal contraband. Since A1 to A6, being Sri Lankan nationals and they were not having the competency of understanding tamil language, so as to the same, the officials concerned after arranging a translator for their convenience after explaining the stipulations of Section 50 of NDPS, the accused persons agreed to make search. The officials concerned seized the illegal contraband possessing a quantity of 99 kgs of Heroine and 20kgs of Amphetamine and 5 guns along with all their belongings.

3.The learned counsel for the petitioner would submit that there are totally 10 accused in this case and the petitioners are arrayed as A7 and A8. The second petition is none other than the cousin of the first petitioner and he is under the care of the first petitioner. Originally A1 to A6 were found in possession of 99kgs of Heroine and 20kgs of Amphetamine and 5 guns along with all their belonging in the boat. He would further submit that they were waiting in the outside jurisdiction of India for running out of diesel. On instructions given by A4, they were provided diesel by the Indian Coastal Guard. On suspicion, their boat was searched and found that A1 to A6 were in possession of contraband. The officials arrested the accused persons and remanded to judicial custody on 26.11.2020, whereas, the petitioners are no way connected with the said offence and they have been falsely roped in in this case as A7 and A8. The petitioners are having permanent resident of Chennai and they got Aadhaar Card and Pan Card. They were subsequently, arrested and remanded to judicial custody on 21.01.2021. Admittedly, there was no recovery from the petitioners. The petitioners also filed an application for interim bail in Crl.M.P.(MD)No.8155 of 2023, since the daughter of the first petitioner's marriage is going to be held on 22.06.2023.

4.The respondent police filed counter affidavit before this Court.

5.The learned Special Public Prosecutor would submit that there are totally 10 accused in this case and the petitioners are arrayed as A7 and A8. Both are Sri Lankan citizens and they are found in possession of bogus indian national records and making false claims of being Indian Nationals with the *mala fide* intention of misleading this Court. The first petitioner himself had mentioned in his confession statement under Section 67 of the NDPS Act, 1985 that his friend, Prabhakaran in Mylapore having phone No.9941173776 and 9862105500 helped him in getting the false documents and fake passport in the name of Fawzab and escaped from Sri Lanka to India in 2017. The voluntary statement of Smt.Uma Mageswari (house owner, LW 14) under Section 67 of NDPS Act, revealed that the first petitioner had approached her only on 01.04.2019 for house on rental



basis. The voluntary statement of independent witness Sh.N. Ziabudeen (LW15), the owner of the premises in which, the first petitioner's shop is situated, stated that he let his shop for rent only on 01.10.2019. hence, there is no history of proof being filed about the permanent resident and occupation of the petitioners in India prior to the year 2019 to prove their Indian nationality. He would further submit that the petitioners are the masterminds involved in this illicit drug trafficking. From the voluntary confession statement of A1 to A6, it has been commonly mentioned that they were employed to involve in this illicit drug trafficking by A9 (Sanny). In fact, A9 is still absconding and A10 is also the master brain behind the entire crime. It is to be noted that A9 has also been clearly mentioned as the owner of the fishing boat "Shenaya Duwa" which was used for transportation of the contraband. The petitioners have contacted A9 on his No.9476496784 and 96713535644 to do illicit drug trafficking. The first petitioner had brought the fishing boat in the name of A1 for Rs.40 lakhs. On successful completion of this drug deal, A9 was to get Rs.2.5 crores Srilankan currency and the first petitioner was to get Rs.2.5 crores Srilankan currency and the second petitioner was promised to be bought and provided a new house. The second petitioner has mentioned in his voluntary confession statement under Section 67 of the NDPS Act that A9 is the maternal uncle of his wife. Further it is to be noted that the second petitioner has identified A9 and A3 and his brother Shantha Sunimal and a proof is signed by him in the photos. Hence, the connection between the petitioners and the accused persons No.1 to 6 and 9 has been evidently established. He would further submit that there are lot of materials to connect the petitioners to other accused persons for illicit drug trafficking and they are the masterminds behind the crime and they voluntarily confessed that about their involvement in the illicit drug trafficking from other accused.

6. Therefore, the prosecution has made out a prima facie with regards to involvement of the petitioners in the present crime, which is a commercial quantity and as such, there is a bar under Section 37 of the NDPS Act. That apart, the petitioners have failed to satisfy the twin conditions as contemplated under Section 37 of the NDPS Act. Hence, this Court is not inclined to grant bail to the petitioners.

7. In the result, this petition stands dismissed.

sd/-

21/06/2023

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27/06/2023

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



1 THE II ADDITIONAL SPECIAL
COURT FOR TRIAL OF NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 UNION OF INDIA THROUGH INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.ANAND R Advocate SR.No.9241 **(I)** Dt.21/06/2023

+1. CC to M/S.SPECIAL PUBLIC PROSECUTOR, SR.No.9326 **(I)**
Dt.21/06/2023

ORDER

IN

CRL OP(MD) No.10255 of 2023

Date :21/06/2023

SA/SSS/SAR. /27.06.2023/4P/7C