



CrI.OP(MD)No.13957 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 11/08/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.13957 of 2023

Syed Noorul Ameen

... Petitioner/ Accused No.2

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.

F.No.48/1/05/2022

... Respondent/Complainant

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.R.Prasanna, Advocate

For Respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor

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

PRAYER:- For Bail in F.No.48/1/05/2022 on the file of the respondent.

ORDER: The Court made the following order:-

The petitioner/A2, who was arrested and remanded to judicial custody, on
23/11/2023 for the offences punishable under sections 8(c) r/w 20(b)(ii)(c), 23, 28



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and 29 of NDPS Act, 1985, in F.No.48/1/05/2022 on the file of the respondent police, seeks bail.

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2.The case of the prosecution, as per the occurrence report, is that one Ahmed @ Mohamed Basith of Keezhakkarai illegally delivered Ganja on the Indian Srilankan Border to be handed over to Srilankan. In pursuance of the above said, this petitioner was engaged by the above said Ahmed @ Mohamed Basith for effecting delivery. He was asked to go to Keezhakkarai, on 20/11/2022. He went to Mulluvadi at midnight and waiting for a Car. In the Car few gunny bags of Ganja and consignment of plastic bottle kept in a small bag. Around 04.00 am, on 21/11/2022, one man called himself as 'Iniyas' approached him. They loaded bags in the boat named 'Kanmani', which was waiting in the yard. He boarded the boat along with Iniyas and two other boat drivers were also available, who are later known as Velu and Kannan. As per the GPS given by Ahmed @ Mohamed Basith, they went to the delivery point. At that time, Coast Guard ship approached them. Out of fear, they threw the gunny bags into the sea. He recorded the same through his mobile phone, which was given by the above said Ahmed @ Mohamed Basith. The above said Kannan was the driver of the boat. But the Coast Guard ship stopped the boat and recovered the thrown Ganja gunny bags from the sea immediately and they were taken to the seashore area and handed over to NCB by



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the Indian Coast Guard along with the above said contraband. Based upon the above said occurrence, subsequent process were undertaken by NCB, as found in the mahazar prepared at that time.

3.The above said gunny bags were checked and inventory was also taken. Around 300 kgs of Ganja and 1 kgs of Hashish Oil were found and they were seized, so also the boat etc. Further process was undertaken and the accused were arrested and remanded to judicial custody.

4.Seeking bail, this petition has been filed.

5.Heard both sides.

6.The learned Senior counsel appearing for the petitioner would submit that even though, the contraband involved is of commercial quantity, this petitioner is neither a habitual offender nor a person, who is frequently dealing with the transportation of Ganja; On the particular day, he was engaged for Rs.50,000/- for loading or unloading purpose and delivery of Bags. He did not even know the contents of the above said gunny bags. So, without knowing the same, he involved in the above for money. Except that, he is not involved in the Ganja Trading.

7.Another ground that has been argued is that even as per the information furnished by the respondent, the Costal Guards intercepted the above said boat, which allegedly contained the contraband, on the early hours on 21/11/2022, he



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was arrested and he was remanded to custody only on 23/11/2022, which is beyond the statutory period of 24 hours, from the date and time of arrest. According to him, on that ground, he is entitled for bail even without going into other aspects.

8.He would rely upon the judgment of the Calcutta High Court in the case of Md.Hanif Mondal and another Vs. State (2018 SCC OnLine Cal 14646), more particularly, in para 7 of the above said order, it has been as under:-

“7.Clearly, the accused persons had not been produced before the special court on May 17, 2018, Whether or not the Judge should have recorded the order or directed the production of the accused on May 19, 2018, it is evident that a fresh case was started on May 16, 2018 and the petitioners were arrested in connection therewith without the petitioner being produced before any Magistrate or the special court within the time mandated by the Constitution or as provided for in the Code.”

9.According to the learned Senior Counsel appearing for the petitioner, the apprehension or capture of the petitioner by the Indian Coast Guard must also be construed and must be calculated for the period prescribed under section 167(2) Cr.P.C. Since he has been remanded to judicial custody much beyond that period, will amount to illegal custody.



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10. With regard to the first point raised by the learned Senior Counsel appearing for the petitioner, it is totally out of place and cannot be taken into account at this stage. He consciously boarded the Car, which contained the contraband, helped the co-accused to load and unload the same in the boat, travelled along in the boat and made delivery on Indo-Srilankan border. So, when serious allegation has been made, the contention that without knowledge of the contents in the bag, he took the consignment is totally out of place and cannot be taken into account. That defence can be raised only at the time of trial.

11. With regard to the second aspect, it requires serious consideration.

12. No doubt that the Calcutta High Court judgment has stated that if the accused is produced beyond the prescribed time, he is entitled for bail. But this court is not in a position to agree the same for the simple reason that even if we consider and construe the period of detention made by the Indian Coast Guards must also be included in the period prescribed, the arrest, subsequent detention will not be vitiated. This is the settled position of law, which has been laid down by the Hon'ble Supreme Court in the case of Saptawna Vs. The State of Assam (AIR-1971-SC-813), which reads as under:-



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“3.It seems to us that even if the petitioner had been under illegal detention between January 10 to January 24, 1968 -though we do not decide this point- the detention became lawful on January 24, 1969 when he was arrested by the Civil Police and produced before the Magistrate on January 25, 1968. He is now an under trial prisoner and the fact that he was arrested in only one case does not make any difference. The affidavit clearly states that he was also treated to have been arrested in the other case pending against him.”

13.In the above said judgment, even though the detention that was made by the Assam Rifle Force must be construed as the arrest period subsequent detention was held to be lawful.

14.So with this background, let us go to the factual aspect.

15.As per the case of the prosecution, as mentioned above, fishing boat was intercepted by the Indian Coast Guard on high-sea, on 21/11/2022 in the early hours. A mahazar was prepared, on 22/11/2022 at the Mandapam Camp. He was remanded to custody. on 23/11/2022 at 12.30 pm. So the contention of the petitioner that he was in illegal custody from 21/11/2022 from the early morning till 22/11/2022. He was handed over to the respondent is not illegal in nature. It is not available to the petitioner at this stage, as mentioned above, it is well settled. Since



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the subsequent order of remand is lawful, on 23/11/2022, he cannot take advantage and he cannot get any benefit from the Judgment of the Calcutta High Court.

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16. Apart from that, the judgment of the Hon'ble Supreme Court in the case of Monoj Vs. State of M.P [(1999)3 Supreme Court Case 715] has also been relied on by the petitioner.

17. No doubt that section 57 of the Code mandates that arrest persons must be produced before the Magistrate concerned within 24 hours. But here, arrest has been made by the respondent only, on 23/11/2022. The retrieving the contraband from the bottom of the sea, taking the person to the seashore area and handing over to the second respondent should not be and cannot be taken as the arrest period. Even if we view this from this angle, the contention of the petitioner is out of place and cannot be accepted. Even though, powers have been given to the Indian Coast Guard to make arrest, it is not the case of the respondent also that this person was arrested by the Indian Coast Guard and later, handed over to the respondent for further investigation. It is not even the case of the petitioner to the effect that they were arrested. What they have stated that they were apprehended and captured and taken to the sea shore area by the Indian Coast Guards. At no stretch of imagination, this period will be taken as arrest period. From this angle also, the argument that has been advanced by the petitioner has to fail. Accordingly, even the



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petitioner is in custody for more than seven months, he is not entitled for bail at this stage, since it involves international smuggling of contraband. So, I find no reason to enlarge the petitioner on bail.

18.In the result, this criminal original petition is dismissed.

sd/-
11/08/2023

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/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,

Madurai - 625 023.

ER

TO

- 1 THE INTERLLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI.
- 2 THE OFFICER INCHARGE
DISTRICT JAIL, PUDHUKOTTAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.SPECIAL PUBLIC PROSECUTOR, Advocate (SR-12211[I] dated 11/08/2023)

ORDER
IN

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Date :11/08/2023

PKP/JGB/SAR- /13.09.2023/ 9P/ 5C

Madurai Bench of Madras High Court is issuing certified
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