



CrI.OP(MD)No.15193 of 2023

WEB COPY

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

Dated: 23/08/2023

PRESENT

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.15193 of 2023

1.Thanalakshmi

2.Rasathi

3.Nagapandi

: Petitioners / Accused No.3 to 5

Vs.

The State rep. by
The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
(Crime No.3 of 2023)

: Respondent / Complainant

For Petitioners : Mr.R.Anand, Advocate

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

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

PRAYER:-

For Bail in Crime No.3 of 2023 on the file of the respondent police.

ORDER: The Court made the following order:-

The petitioners, who are arrayed as A3 to A5 were arrested and remanded to

<https://www.mhc.tn.gov.in/judis>



Crl.OP(MD)No.15193 of 2023

judicial custody, on 03/01/2023 for the offences punishable under sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act, in Crime No.3 of 2023 on the file of the respondent police, seek bail.

2.The case of the prosecution is that on secrete information from the police informer, the de-facto complainant along with the police team went to Pattiveeranpatti to Ayyankottai road and near a grocery shop, they found a Car bearing registration No.TN-68-X-999 and a Two Wheeler bearing registration No.TN-57-BX-7294 along with some packages. On seeing the police team, all the persons tried to escape from that place. They were surrounded and enquired. At the time of enquiry, Thasildar, Nilakkotai and Village Assistant were available. With the consent of the accused, they made search and found 40 kgs of Ganja. Samplings were taken as per the procedure in the presence of the revenue officials. On enquiry, they disclosed their name as Sakthivel, Thanalakshmi, Rajathi and Nagapandi. Similarly, search was made in the two wheeler and 20 kgs of Ganja was also recovered from the above said two wheeler. They also disclosed their name as Sakthivel and another escaped from that place. The accused were arrested and remanded to judicial custody.

3.Seeking bail, this petition has been filed by the petitioners.

4.The learned counsel appearing for the petitioners would submit that search



Crl.OP(MD)No.15193 of 2023

and seizure were undertaken in the presence of the revenue officials is totally illegal.

WEB COPY

He would refer to the judgment of the Hon'ble Supreme Court in the case of Simarnith Singh Vs. State of Pujab (2023 SCC OnLine SC 906) for the purpose of argument that if there is violation of section 52-A(2), then the benefit must be extended to the accused.

5.In the above said judgment, the judgment in the case of Union of India Vs. Mohanlal (2016)3 SCC 379 was also referred to in para 9, which reads as under:-

“9.In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case, it was held thus:-

15. It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.



WEB COPY

16.Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17.The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision



Crl.OP(MD)No.15193 of 2023

in the Act that mandates taking of samples at the time of seizure.

WEB COPY

The above said judgment of the Hon'ble Supreme court has not been followed in this matter. So, the entire investigation is vitiated and they need not be subjected to trial process and no purpose is going to be served, since violation is noticed.

6.Per contra, the learned Additional Public Prosecutor would submit that only search and sampling were undertaken in the presence of the revenue officials and later, it was forwarded to the jurisdictional court and inventory was taken as per section 52-A(3) of the Act in the presence of the Judicial Magistrate and the Judicial Magistrate has also certified the same.

7.Perusal of the CD file also shows that samples were undertaken by the Special Judge in Cr.MP No.1249 of 2023. So the question, which arises for consideration is that whether the sample, which was taken by the police in the presence of the revenue officials at the time of arrest vitiates the entire investigation, can be a matter for consideration by the trial court at the time of trial.

8.So the contention on the part of the petitioners that there is a violation of section 52A(2) of the NDPS Act is not correct on record. The CD file indicates that proper procedure has been undertaken, after the production of the contraband before the Special Court. But as mentioned earlier, whether the sampling undertaken by the respondent, at the time of making the arrest, cannot be a matter



Crl.OP(MD)No.15193 of 2023

for consideration in this petition.

WEB COPY

9.Except this ground, no other ground worth considering has been made by the petitioners, since this court is not sufficient enough to satisfy the requirement of section 37 of the NDPS Act.

10.For the reasons stated above, I find no reason to entertain the bail petition.

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

sd/-
23/08/2023

/ TRUE COPY /

/09/2023

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

ER

To

1.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.

2.The Officer Incharge,
Sub Jail,
Nilakottai,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.OP(MD)No.15193 of 2023

ORDER

IN

CRL OP(MD) No.15193 of 2023

Date :23/08/2023

ED/JGB/SAR- (05/09/2023) 7P / 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023