



Crl.OP(MD)No.16684 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 04/10/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

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1.Thanalakshmi

2.Rasathi

3.Nagapandi

... Petitioners/ Accused 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/ A3 to A5 were arrested and remanded to 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.



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2.The case of the prosecution is that on secret information from the police informer, the de-facto complainant along with the police team went to Pattiveeranpatti to Ayyankottai road, 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, who are arrayed as A3 to A5.

4.Heard both sides.

5.Section 52-A(2) of the Narcotic Drugs and Psychotropic Substances Act, reads as follows:-

“52-A.Disposal of seized narcotic drugs and psychotropic



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substances-(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2)Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description,



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quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a)certifying the correctness of the inventory so prepared;

or

(b)taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c)allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

6.The learned counsel appearing for the petitioners by heavily relying upon the above said provision would submit that no proper sampling was undertaken soon



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after the arrest made; Even the certificate that has been issued by the concerned Presiding Officer appears to be not legal, since no material is available to show that proper application was filed by the Investigating Officer to take up the sample.

7.For that purpose, entire records have been called for from the trial court and certificate has also been issued by the competent trial Judge. This fact was also elaborated by me in the earlier order.

8.Now the learned counsel appearing for the petitioners entertained doubt about the very genuineness of the certificate and the manner in which, the above said samplings were drawn. But absolutely, I find no substance in the argument, when official documents are available, unless the valid ground is available to the petitioners, they cannot dispute the same.

9.It is the general presumption that every officer act is performed correctly in the course of business. Absolutely, I find no reason entertain any doubt with regard to the genuineness of the document.

10.The contention that no such copy was made available, cannot be a matter for consideration. If the petitioners wants copy of the application or certificate, they can very well approach the concerned trial court and get the certified copy. So, I find absolutely no reason to entertain this argument.

11.The next ground is that sampling was not undertaken as per the above said



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provisions, since only the assistance of the revenue officials were sought and in their presence, search was made.

12. But the learned Additional Public Prosecutor would submit that section 52-A (2) of the Act does not deal about the sampling taken soon after the arrest. Section 52-A(2) deals about the disposal of the properties and sending the same for chemical analysis.

13. The learned counsel appearing for the petitioners would further submit that since the property was not produced before the concerned Presiding Officer soon after the seizure, there is a violation of section 52A(2) of the Act. He would also rely upon the judgments reported in the case of Mangilal Vs. The State of Madhya Pradesh (2023 Livelaw SC 549) and 2023 SCC OnLine SC 906 (Simarnjit Singh Vs. State of Punjab).

14. But here, Form-95 has been prepared soon after the seizure. It was also produced before the competent Presiding Officer. Sampling was also taken as per the provisions of section 52A(2) of the Act. So, the contention on the part of the petitioners that the property was not produced before the Presiding Officer soon after the recovery is not also correct on record.

15. Except the above said grounds, no other ground worth considering has been made by the petitioners, since this ground is not sufficient enough to satisfy the



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requirement of section 37 of the NDPS Act.

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16.For the reasons stated above, I find no merit to entertain this petition.

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

sd/-
04/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER
TO

1 THE OFFICER INCHARGE,
SUB JAIL, NILAKOTTAI, DINDIGUL DISTRICT.

2 THE INSPECTOR OF POLICE,
PATTIVEERANPATTI POLICE STATION,
DINDIGUL DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.16684 of 2023
Date :04/10/2023

SA/JGB/SAR. /31.10.2023/7P/4C

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