



WEB COPY

CRL OP(MD). N



22

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

Reserved on: 13.02.2023

Pronounced on: 20.02.2023

PRESENT

**The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA**

CRL OP(MD). No.20350 of 2022

Navas Khan

... Petitioner/Accused No.1

Vs

State Rep.by  
The Inspector of Police,  
Kenikkarai Police Station,  
Ramanathapuram District.  
(Crime No.75/2021)

... Respondent/Complainant

For Petitioner : M/s.Prabhu Rajadaurai.G, Advocate  
For M/s.Jinnah S M A, Advocate.

For Respondent : Mr.T.Senthilkumar,  
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.75/2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner /A1 who was arrested and remanded to judicial custody on 18.01.2021 for the offences under Sections 8(c)r/w.20(b) (ii)(c), 25, 29(1) of NDPS Act in Crime No.75 of 2021 on the file of the respondent police seeks bail.

2.The case of the prosecution is that on 17.01.2021 at about 23.00 hrs based on the secret information when the police party went on raid to the petitioner/A1's house namely Nawazkan situated at Door No.1/1195, 3<sup>rd</sup> Cross street, 6<sup>th</sup> Street, Sakkarai kotti, Ramanathapuram along with revenue officials they found 260kgs of kanja in eight gunny bags and one polythene bag in the south west side room of the said house and also found electronic weigh machine- 2 nos, polythene cover -20 nos and one cello tap role bundle. After completing all the formalities contemplated under NDPS Act, the

<https://www.mhcoj.gov.in/jds>



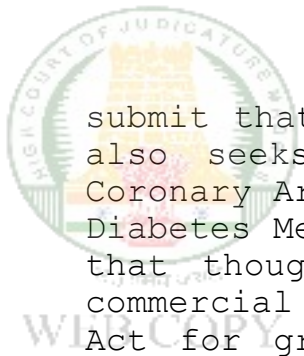
respondent police arrested the petitioner /A1 along with 2 of kanja and seized other items. Further A1 along with A2 had procured 500kgs of kanja from A16/Chelladurai and the same had been transported in a Mahendra TUV car bearing Reg. No. TN 65 AF 5297 by A3/Rajesh kumar and A4/DineshKumar. A3 and A4 had handed over the contraband to the petitioner herein who had thereafter packed them in 2kgs packs and had sold around 240kgs of kanja with the help of the co-accused and the said kanja has been transported to Srilanka.

3.The learned counsel for the petitioner would submit that the petitioner is innocent and based on the recovery of 240kgs of kanja the petitioner along with other accused have been implicated in this case. He would further submit that the petitioner was remanded to judicial custody on 18.01.2021. Thereafter interim bail was granted to the petitioner on medical grounds on 29.03.2022 in Crl.O.P(MD) No.5078 of 2022 for a period of one month from 29.03.2022 to 29.04.2022 and later the same was extended in Crl.M.P(MD) No.5289 of 2022 dated 29.04.2022 for yet another month. While so the petitioner had moved regular bail and the trial court had granted bail to the petitioner in Crl.M.P.No.1069 of 2022 vide order dated 24.05.2022. Subsequently the petitioner surrendered before the prison authorities on 30.05.2022 and executed sureties before the trial court and later he was released on bail. The respondent having been aggrieved by grant of bail moved an application for cancellation of bail before this Court in Crl.O.P(MD) No.13519 of 2022 and this Court has cancelled the bail granted to the petitioner by order dated 17.10.2022. Against the cancellation of bail, the petitioner had approached the Hon'ble Hon'ble Supreme Court in SLP(Criminal) Diary No.35310/2022 dated 04.11.2022 and the Hon'ble Supreme Court had passed the following order:

*"The petitioner may, if advised, keep the application seeking bail ready with advance notice to the Public Prosecutor . If such an application is moved on the day he surrenders before the court, the same shall be considered by the concerned Court as expeditiously as possible"*

4.Subsequently the petitioner had surrendered before the trial Court on 07.11.2022 and had applied for bail and the trial court had dismissed the bail application in Cr.M.P.No.2963 of 2022 dated 07.11.2022

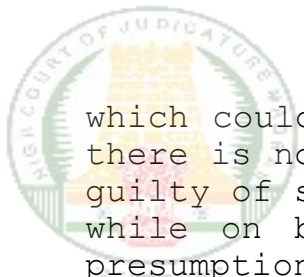
5.The learned counsel for the petitioner would further submit that the petitioner is also entitled for bail on merits on the ground that the respondent has not complied with the mandatory provisions under section 42 and 50 of the NDPS Act regarding search, arrest and seizure. The co-accused in this case namely A2 to A16 were released on bail by the trial Court on the ground of merits as well as on the ground of default bail, therefore the petitioner is also entitled for bail on the ground of parity. He would further



submit that apart from canvassing the bail on merits the petitioner also seeks bail on medical ground since he is suffering from Coronary Artery disease Old Inferior Myocardial Infarction, Type-2, Diabetes Mellitus and Systemic Hypertension. He would further submit that though the contraband alleged to have been recovered is a commercial quantity and there is a bar under Section 37 of the NDPS Act for grant of bail it does not oust the jurisdiction of the constitutional Court to grant bail to the accused on medical grounds therefore he seeks for grant of bail to the petitioner.

6.The respondent has filed a detailed counter.

7.The learned Additional Public Prosecutor appearing for the respondent would submit that it is case where the petitioner was arrested for having found in possession of 260kgs of kanja, which is a commercial quantity. The contraband was recovered in the south-west side room of the house of the petitioner which was under his occupation. Further the petitioner was arrested along with contraband of 260kgs of kanja, two electronic weighing machine, 20 polythene covers and one cello tap was recovered from his possession. Earlier the petitioner was granted interim bail on medical grounds in Crl.O.P(MD) No.5078 of 2022 dated 29.03.2022 for a period of one month with a condition that he must surrender before the prison authorities on 29.04.2022 without fail. Subsequently the accused had filed application for extension of time in Crl.M.P(MD). No.5289 of 2022 dated 29.04.2022 and time was extended for a period of one month directing the petitioner to surrender before the prison authorities on or before 30.05.2022 and also it is made clear that no further extension of time will be granted by this Court, whereas the petitioner without complying with the order passed by this Court and without surrendering before the prison authorities had moved a bail application in Cr.M.P.No.1069 of 2022 before the Special Court for E.C and NDPS Act cases, Pudukottai and the said court had granted bail to the petitioner. Aggrieved by the same, the respondent had moved cancellation of bail before this Court in Crl.O.P(MD) No.13519 of 2022 and this court by an order dated 17.10.2022 had cancelled the bail granted to the petitioner. Against which the petitioner had approached the Hon'ble Supreme Court and the Supreme Court had also directed him to surrender and move application for bail. He would further submit that the petitioner was found in conscious possession of contraband which is a commercial quantity and the said contraband was recovered from the room in his house which was under his possession and there are reasonable grounds to believe that the petitioner is the owner of the contraband. The respondent police on prior intimation and after completing with the formalities required under the NDPS Act had arrested the petitioner and recovered the contraband from his possession. He would further submit that there is no violation of mandatory provisions under Section 42 of the NDPS Act. He would further submit that the issue whether there was compliance of procedures laid down under the NDPS Act is the question of fact

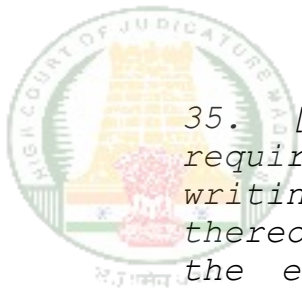


which could be tested only during the course of trial. In <sup>1</sup>se there is no reasonable grounds to believe that the petitioner is not guilty of such an offence and he is not likely to commit any offence while on bail. When the contraband was recovered from his house presumption under sections 35 and 54 of the Act will operate as against the petitioner and thereby he would seek for dismissal of the bail petition. In support of his contention the learned Additional Public Prosecutor relied on the judgment of 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**. He would further submit that in respect of the medical grounds the petitioner is alleged to have been suffering from Coronary Artery disease Old Inferior Myocardial Infarction, Type-2, Diabetes Mellitus and Systemic Hypertension and his condition is stable and that the medical report does not suggest that he is in need of any specialized treatment at this moment and thereby he objected for grant of bail to the petitioner.

8.Heard. Perused the materials available on record including the First Information Report.

9.As per the prosecution the petitioner is alleged to have been arrested for having found in possession of 260kgs of kanja. The contraband is recovered from the room inside his house. 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:

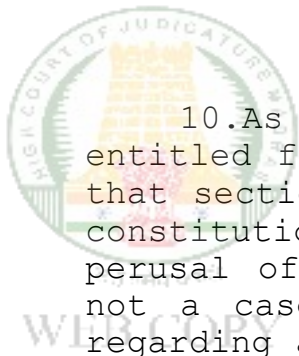
"31. Another submission that has been raised by the counsel for the respondent both before the High Court and this Court is that due to non-compliance of the procedural requirement under [Section 42](#) of the NDPS Act 20, the respondent should be granted bail. [Section 42](#) provides that on the receipt 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 with 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 [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 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 entry, 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".



10.As far as the next contention that the petitioner is entitled for grant of bail on medical grounds this Court is aware that section 37 of the NDPS Act does oust the jurisdiction of the constitutional court to grant bail on medical grounds. However on perusal of the medical records this court is convinced that it is not a case where the condition of the petitioner is so serious regarding any specialised treatment on that his life at paid peril at the moment and that he is to be granted bail on medical grounds.

11.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 the NDPS Act for grant of bail, hence the petition is liable to be dismissed.

12.In view of the same, the Criminal Original Petition stands dismissed.

sd/-

20/02/2023

/ TRUE COPY /

/03/2023

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

AAV

TO

1. The Inspector of Police,  
Kenikkarai Police Station,  
Ramanathapuram District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

COPY TO

THE OFFICER INCHARGE,  
CENTRAL SUB JAIL,  
RAMANATHAPURAM.

+1 CC to M/s.S.M.A.JINNAH, Advocate ( SR-2619[I] dated 21/02/2023 )

ORDER

IN

CRL OP(MD) No.20350 of 2022

Date :20/02/2023

RS//SAR-4(08.03.2023) 6P 5C