



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRACRL.O.P(MD)No.20660 of 2022

WEB COPY

1.Ajjimulkhan
2.Syed Ibrahim

...Petitioners/Accused 1 & 2

-vs-

The State represented by
The Inspector of Police,
Pamban Police Station,
Ramanathapuram District.
(in Cr.No.157 of 2021)

... Respondent/Complainant

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

PRAYER :- For Bail in Crime No.157 of 2021 on the file of the
Respondent Police.

For Petitioners	: Mr.S.Bharathy Kannan, Advocate
For Respondent	: Mr.T.Senthil Kumar
	Additional Public Prosecutor

ORDER

The petitioners, who were arrested and remanded to judicial custody on 15.10.2022 for the offences punishable under Section 102 of Cr.P.C., in Crime No.157 of 2021 on the file of the respondent police, seek bail.

2.The case of the prosecution, as per the de-facto complainant, A.Yasar Moulana, Sub Inspector of Police, Mandapam Police Station, is that on 21.05.2021, while he along with other police officials were on surveillance rounds on a 5 ton boat, they received a phone call from one Devakumar stating that a bag containing ganja had washed ashore at Kurusadai Island. The de-facto complainant along with other police officials reached the particular place and found a bag and after opening, it was found to contain 17 packets of ganja each weighing 2 kgs totalling 34 kgs. The de-facto complainant and other officials made search near the location and no person was found near the place, where the bag was found. Subsequently, based on the complaint, a case in Cr.No.15 of 2021 was registered by the Mandapam Marine Police Station. Later, the case was transferred to the respondent Police and re-registered as Cr.No.157 of 2021 on 17.06.2021 under Section 102 of Cr.P.C. Subsequently, the accused persons were arrested in a case in Cr.No.193 of 2022 registered by the very same police and during the course of investigation, they

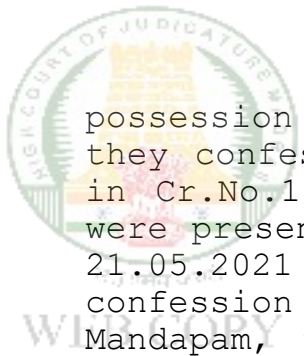


confessed that they are the persons, who had dropped bag containing 34 kgs of ganja near Kurusadai Island and the petitioners were arrested on 15.10.2022 and remanded to custody.

3.The learned Counsel for the petitioners would submit that the petitioners are innocents and a false case has been registered against them. He would also submit that the petitioners were earlier taken illegal custody on 13.10.2022 by the respondent Police and they were kept in the respondent police station. When it was questioned by the petitioners and their relatives, they were falsely implicated in this case. Thereafter, the first petitioner's wife, namely, A.Fathima, and the second petitioner's wife, S.Sharmila Banu, have approached the Chairman/District Munsif cum Judicial Magistrate, Taluk Legal Services Committee, Rameshwaram to recover the C.C.T.V., footages of the police station on 13.10.2022 and 14.10.2022, to prove that the petitioners were kept in illegal custody. The learned District Munsif cum Judicial Magistrate, Rameshwaram, by proceedings, dated 02.11.2022, had appointed one R.Dominic Ravi, Advocate, "B" Panel Lawyer of the Legal Services Committee, to view the C.C.T.V., footage of the police station on 13.10.2022 and 14.10.2022 in front of the petitioners' wives and to file a report. The Inspector of Police, Pamban Police Station was also directed to make necessary arrangement to view the CCTV footage on 13.10.2022 and 14.10.2022. Whereas, when the Advocate Commissioner had appeared before the respondent Police, it was informed that C.C.T.V., camera did not work and that there was no records from 01.10.2022 to 01.11.2022. He would further submit that it is clear that the respondent police has willfully suppressed the fact of keeping the petitioners in illegal custody and have informed that there is no such footage. The respondent police have antagonized with the petitioner and based on the confession recorded from the petitioners, they have implicated the petitioners in a case of recovery of commercial quantity of ganja in which the accused were not known.

4.He would further submit that the petitioners, other than the case registered in Cr.No.193 of 2022 and the earlier case in Cr.No.157 of 2021, in which, they were implicated based on their confession, there is no case pending against the petitioners and only in order to escape from the clutches of law, the respondent police have implicated the petitioners in the present case. He would also submit that the petitioners are poor Painters working for daily wages and they have nothing to do with the offence and they are unnecessarily in custody for the past 150 days and thereby, he would submit that the petitioners have satisfied with the condition, as required under Section 37 of NDPS Act for grant of bail and they are entitled to be released on bail.

5.The respondent Police has filed a detailed counter affidavit. The learned Additional Public Prosecutor would submit that the petitioners were arrested in Cr.No.193 of 2022 for being found in



possession of 1.200 kgs of ganja and during the course of /, they confessed to their involvement in the earlier case registered in Cr.No.157 of 2021. He would also submit that the petitioners were present at Mandapam on the date of alleged occurrence, ie., on 21.05.2021 and he would fairly concede that other than the confession statement and the tower location fixing their presence at Mandapam, there is no other material or record available in this case to connect the petitioners to the crime. He would pray for dismissal of this petition.

6.In reply, the learned Counsel for the petitioners would submit that in Pamban, there is only one cellphone tower and the petitioners being residents of Pamban, there is every possibility that the tower location showing their presence in Pamban on the particular day.

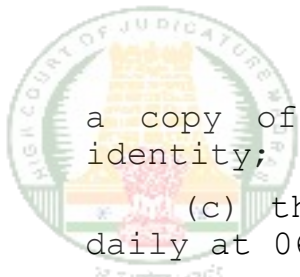
7.Heard. Perused the materials available on record.

8.In this case, to prove their innocence and to show that they were kept in illegal custody, the petitioners' wives had filed a petition before the learned District Munsif cum Judicial Magistrate, Rameshwaram and based on the direction of the learned District Munsif cum Judicial Magistrate, Rameshwaram, Mr.R.Dominic Ravi, Advocate Commissioner who appointed to visit the police station and to peruse the C.C.T.V. footage on 13.10.2022 and 14.10.2022. He has after visiting the Police Station filed a report stating that the Inspector of Police had informed that the C.C.T.V. was not functioning between 01.10.2022 and 01.11.2022 and that the C.C.T.V., footage during the period was not available. Hence, this Court is of the opinion that there is a possibility of petitioners being kept in illegal detention and this Court is satisfied that there are reasonable grounds for believing that the petitioners are not guilty of the offence and that the petitioners are painters and they do not have any other cases registered against them before this occurrence. The petitioners have satisfied the conditions required under Section 37 of the NDPS Act for grant of bail.

9.Further, taking into consideration of the above facts and submissions made by the learned Counsels and that the petitioners are in judicial custody from 15.10.2022, this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned **(*)Special Court for E.C. And NDPS Act Cases, Pudukottai (Court of Additional District and Sessions Judge)**, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain



a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioners shall report before the respondent police daily at 06.30 p.m., until further orders;

(d) the petitioners shall not commit any offences of similar nature;

(e) the petitioners shall not abscond either during investigation or trial;

(f) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

(h) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

10.It is clear that the observations made in this petition are only for deciding this bail petition and this will not have a bearing during the time of trial.

sd/-
07/02/2023

**(*)Amended as per order of this
Hon'ble Court dated 16/02/2023 in
Crl.MP(MD).2817/2023 in Crl.OP(MD).
20660/2022**

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16/02/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

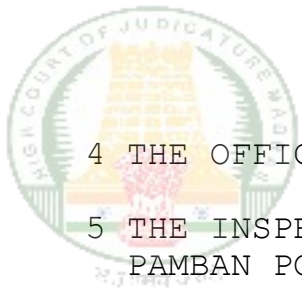
CMR

TO

1 THE JUDICIAL MAGISTRATE, PAMBAN.

2 DO THROUGH:THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.

3 THE JUDGE,
SPECIAL COURT FOR E.C. AND NDPS ACT CASES,
PUDUKOTTAI (COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE)



4 THE OFFICER INCHARGE, DISTRICT JAIL, PUDUKOTTAI.

5 THE INSPECTOR OF POLICE,
PAMBAN POLICE STATION, RAMANATHAPURAM DISTRICT.

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

+1. CC to M/S.BHARATHY KANNAN S Advocate SR.No.2443 Dt.16/02/23

ORDER IN

CRL OP(MD) No.20660 of 2022
Date :07/02/2023

SA/SBN/SAR. /08.02.2023/5P/7C

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SA/VR/SAR. /08.02.2023/5P/8C