



CRLOP(MD)No.5908 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 30.04.2024

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)Nos.5908 and 5935 of 2024

CRLOP(MD)No.5908 of 2024

Parimala Doss @ Doss

... Petitioner/ Accused 5

Versus

The Inspector of Police,
NIB-CID Police Station,
Sivagangai District.
[Crime No.12 of 2020]

...Respondent/ Complainant

For Petitioner : Mr.B.KUMAR, Senior Counsel
for M/s.A.BANUMATHY, Advocate

For Respondent : Mr.T.SENTHIL KUMAR
Additional Public Prosecutor

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

PRAYER :- To release the petitioner on bail in C.C.No.2 of 2021 on the file of the Additional District and Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukottai.

CRL OP(MD)No.5935 of 2024

Parimala Doss @ Doss

... Petitioner/ Accused 4

Versus

Union of India
through Junior Intelligence Officer
Narcotics Control Bureau,
Chennai Zonal Unit,
F.No.48/a/12/2023-NCB/MDS

...Respondent/ Complainant

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



CRLOP(MD)No.5908 of 2024

WEB COPY

For Petitioner : Mr.B.KUMAR, Senior Counsel
for M/s.A.BANUMATHY, Advocate
For Respondent : Mr.C.ARUL VADIVEL @ SEKAR
Special Public Prosecutor for NCB Cases

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

PRAYER :- To release the petitioner on bail in F.No.48/1/12/2023-NCB/MDS on the file of the respondent department.

COMMON ORDER : The Court made the following order :-

The Junior Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit, has registered a case in F.No.48/1/12/2023-NCB/MDS, as against the petitioner for the offence under Section 8(c) r/w. Sections 20(b)(ii)(C), 25, 27A, 28, 29 of NDPS Act, 1985 and remanded him into judicial custody on 18.08.2023. Subsequently, the petitioner has involved in a case in Crime No.12 of 2020 on the file of the Inspector of Police, NIB CID Police Station, Sivagangai district, registered for the offence under Sections 8(c), r/w. 20(b)(ii)(C), 29(1) and 25 of the NDPS Act, 1985 and in connection with this case, he was arrested and remanded into judicial custody on 28.08.2023. Therefore the petitioner has filed these petitions in CrIP(MD)Nos.5935 and 5908 of 2024 seeking bail.

2.The case of the prosecution in CrI OP(MD)No.5935 of 2024 is that the petitioner is accused No.4. On 16.08.2023 based on the secret information, the respondent Police seized 423 kgs of Ganja from a Mahindra Bolero pickup vehicle at

<https://www.nic.in.gov.in/judis>



CRLOP(MD)No.5908 of 2024

R.S.Mangalam - Paramkudi Road, near Pitchanikottai Village, Ramanathapuram

WEB COPY

District. As per the enquiry and confession statement, one Pavithra purchased the contraband from Andhra Pradesh. It was transported in an Ashok Leyland vehicle and was handed over to A1 to A3 at Viralimalai as per the instructions of A4 and A5. Subsequently the contraband was transferred from the Ashok Leyland vehicle to a Mahindra bolero pickup vehicle and thereafter A1 to A3 proceeded to transport it to Sri Lanka. At that time, they were nabbed by the Police officials near Pitchanikottai Village.

3.The case of the prosecution in CrI OP(MD)No.5908 of 2024 is that the petitioner is arrayed as A5. On 22.06.2020, on receipt of secret information around 12.00 noon, the police officials intercepted a white colour XYLO car bearing Reg.No.TN 22 CH 4986 and they found 144 KGs of ganja in the car. Accused No.3, who was driving the said car, gave a voluntary confession statement. Thereafter the police officials had recovered the 144 KGs of Ganja. Based on the confession statement of A3, the petitioner has been arrested in this case.

4.The learned Senior Counsel appearing for the petitioner in respect of Crime No.12 of 2020 submits that there is no material as against this petitioner except the confession statement recorded under Section 67 of the NDPS Act. There is no seizure of any contraband or an incriminating material from the accused other than the



CRLOP(MD)No.5908 of 2024

WEB COPY

confession statement. The Hon'ble Supreme Court in Tofan Sing Vs State of Tamil Nadu reported in (2021) 4 SCC 1 has held that the confession statement recorded under Section 67 of the NDPS Act is not admissible in evidence. By referring the final report filed in CC.No.2 of 2021, the learned Senior Counsel pointed out that there is violation of mandatory provision under Section 52(A) of the NDPS Act. The learned Senior Counsel by referring to the Union of India Vs Mohan Lal's case reported in (2016) 3 SCC 379 submits that the compliance of the mandatory provisions under Section 52(A) of the NDPS Act will render the FSL report and the connected documents as primary evidence. In this regard the learned Senior Counsel has relied on Simranjith Singh Vs State of Punjab reported in 2023 SCC Online SC 906; Bharath Chauadary Vs Union of India, reported in 2021 20 SCC 50 wherein the Hon'ble Supreme Court has held as follows;

“In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh (supra). The impugned order qua A-4 is, accordingly, quashed and set aside and the order dated 2nd November,



CRLOP(MD)No.5908 of 2024

WEB COPY

2020 passed by the learned Special Judge, EC & NDPS Cases, is restored. As for Raja Chandrasekharan [A-1], since the charge sheet has already been filed and by now the said accused has remained in custody for over a period of two years, it is deemed appropriate to release him on bail, subject to the satisfaction of the trial Court.”

5.The learned Senior Counsel for the petitioner insofar as the case in F.No.48/1/12/2023-NCB/MDS is concerned submits that there is no seizure of any contraband from the petitioner; according to the prosecution itself, the offending vehicle does not belong to the petitioner nor was he an occupant in the vehicle; At the time of seizure the petitioner was in Chennai; in the counter affidavit it is not stated that the pick up vehicle belongs to the petitioner or it was hired by the petitioner; the petitioner is prosecuted based on the confession statement alone, which is not admissible as per the Tofan Sing's case; though it is stated in the counter affidavit that there are call detail records between the petitioner and the other accused, it will not prove the conspiracy. Therefore the petitioner be released on bail.

6.The learned Additional Public Prosecutor appearing for the State has raised his objects in Crime NO.12 of 2020 (CC No.2 of 2021) that accused No.3 was arrested with the possession of contraband of 144 Kgs of ganja; the investigation reveals that the petitioner / A5 is a close associate of other accused and he along with other



CRLOP(MD)No.5908 of 2024

WEB COPY

accused actively involves in drug trafficking and the petitioner with A4 has funded for purchasing ganja. A4 and this petitioner instructed A3 to purchase this contraband in Andhra Pradesh; accordingly A3 purchased ganja in Andhra Pradesh and transported it; On the way it was handed over to the petitioner; the investigation further reveals that the petitioner and A4 conspired to smuggle the contraband to Sri Lanka; the petitioner has been absconding for more than three years and during this period he has involved in three other similar cases, which are under investigation and therefore, the learned Additional Public Prosecutor strongly opposes for grant of bail to the petitioner.

7.The learned Additional Public Prosecutor has produced the list of the cases pending against the petitioner under Section 35 of the NDPS Act, which reads as follows:

Sl. No	District	Police station and Crime No	Offence under Section
1	Pudukottai	Manamelkudi PS, Crime No.452 of 2021	8(c) r/w 20(b)(ii)(B) of NDPS Act
2	Thanjavur	Peravurani PS, Crime No.608 of 2022	8(c) r/w 20(b)(ii)(B) of NDPS Act
3	Chennai	NCB, Crime No.12 of 2023	8(c) r/w 20(b)(ii)(C), 27, 28 and 29 of NDPS Act.



CRLOP(MD)No.5908 of 2024

WEB COPY

The learned Additional Public Prosecutor by referring to these cases submits that this shows the culpable mental state to attract the offence under Section 35 of the NDPS Act. He has also referred to the judgment of the Hon'ble Supreme Court in Prasanta Kumar Sarkar Vs Ashis Chatterjee and Another reported in (2010) 14 SCC page 496.

8.The learned Special Public Prosecutor appearing for the NCB has made his submissions as follows:

i.The investigation reveals that the petitioner received a phone call from one Pavithra from Andhra Pradesh and on her request to help her in trafficking 200 pockets of Ganja to Sri Lanka either through Athiramapattinam or Ammapattinam, he engaged other accused for illicit trafficking of the contraband. There is no necessity for physical possession of contraband, conscious possession alone is sufficient as per Section 18 and Section 35 of NDPS Act. Further when the person has control or domain over a thing either directly or through other person, it is called constructive possession, which may be either sole possession or joint possession and it has been reiterated by the Hon'ble Supreme Court in Balbir Kaur Vs State of Punjab (Criminal Appeal No.2108 of 2008).

ii.There are ample evidences against the petitioner for having nexus with the other accused. He has involved in several criminal cases under the NDPS Act. The



CRLOP(MD)No.5908 of 2024

call details shows his involvement in the drug trafficking business along with other accused.

WEB COPY

iii. The statements of the petitioner and Sasiskumar (A5) reveal that the petitioner went along with him in an Innova Car near the toll plaza, they monitored when A1 and A2 transferred the contraband from Ashok Leyland vehicle to Mahindra bolero pick-up vehicle. The cell phone tower location of the petitioner and other accused on 15.08.2023 is at Viralimali toll plaza.

iv. The investigation further reveals that the petitioner was using a particular mobile number, which is registered in the name of Sasikumar (A5), for drug trafficking and it was recovered from the petitioner. This establishes the criminal conspiracy among the petitioner and the other accused. Therefore there is no reasonable belief that the petitioner is not guilty of committing the offence under the NDPS Act. Therefore, the twin conditions as mandated under Section 37 of the Act are not satisfied.

v. The accused in the present case has involved in several cases under the NDPS Act and he is a habitual offender. The voluntary statement of the accused reveals that he along with the said Pavithra has been involved in ganja trafficking business for the past three years. His statement recorded under Section 67 of the NDPS Act also reveals the same. Therefore there cannot be any reasonable belief that he is unlikely



CRLOP(MD)No.5908 of 2024

to commit any such offence while on bail. This Court by order dated 29.02.2024 dismissed the bail application filed by accused No.5 in CrI OP(MD)No.1536 of 2024.

vi.The contraband in this case falls under commercial quantity, involving many accused and the main supplier of the contraband and the said Pavithra have be to arrested. The trial court has granted four months' time for filing complaint by its order dated 29.01.2024. The investigation is at the crucial stage and granting bail to the petitioner at this stage would prejudice the investigation.

9.This Court considered the rival submissions and perused the materials placed on record.

10.Since both these cases are pertaining to the same petitioner and the offence is under NDPS Act, this Court disposes of these cases by way of this common order.

11.The quantity of contraband involved in CC.No.2 of 2021 is 144 Kgs and in F.No.48/1/12/2023-MCN/MDS is 423 Kgs. In both these cases admittedly, the contraband has not been recovered from this petitioner. The petitioner has been implicated only through the confession statement of the co-accused. The NIB-CID has conducted investigation in Crime No.12 of 2020, which was registered on 22.06.2020 and has also filed the final report on 28.08.2023. Though NIB-CID has filed the final report, they have not collected any materials as against this petitioner, other than the confession statement of the co-accused. However, the NCB has conducted a thorough



CRLOP(MD)No.5908 of 2024

investigation and found out the nexus of the petitioner with the other accused, who has involved in a case, which is pending with the NCB. The petitioner was in possession of a SIM Card, which has been taken in the name of A5, in his mobile phone and the tower location details of the said mobile phone reveals that this petitioner, a native of Manamelkudi Village, Pudukottai was present in Viralimalai toll plaza, where according to the NCB, the contraband, which has been transported from Andhra Pradesh in an Ashok Leyland vehicle was transferred to a Mahendra bolero pick-up vehicle. The investigation agency has also collected the tower location details of the other accused, who have involved in this case. Apart from these two cases, the petitioner has also involved three other cases, which is tabulated above.

12.As rightly pointed by the learned Special Public Prosecutor for Narcotics Control Bureau, the Hon'ble Supreme Court in Union of Indian through Narcotics Control Bureau, Lucknow Vs. Mohamed Nawaz Khan reported in (2021) 10 SCC 100 held that absence of possession of contraband on the accused person, would not dilute the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. Section 37 of the NDPS Act mandates that any person involved in an offence of commercial quantity shall not be released without satisfying the twin tests contemplated. Considering the call details, which is collected by the NCB in



CRLOP(MD)No.5908 of 2024

F.No.48/1/12/2023-NCN/MDS and the antecedents of the petitioner under the NDPS Act, this Court is not inclined to grant bail to the petitioner. Accordingly the criminal original petition in CrIOP(MD)No.5935 of 2024 stands dismissed.

13.It appears that NIB-CID, Sivagangai district has not conducted proper investigation as against this petitioner in Crime No.12 of 2020, but filed the final report with the confession statement alone. However in view of the investigation conducted by the NCB, Chennai Zonal Unit in F.No.48/1/12/2023-NCN/MDS this Court taking adverse inference based on the materials collected by the NCB as against the petitioner, dismisses the CrIOP(MD)No.5908 of 2024 also.

14.This Court expects the NIB-CID at least after taking into consideration of the materials collected by the NCB in the similar case registered as against the petitioner, would conduct proper and effective investigation.

15.The offence under the NDPS Act is an offence against the society. The investigation in both cases expose how the investigations are conducted by different investigation agencies. Therefore this Court directs the Registry to mark a copy of this order to the Additional Director General of Police, NIB-CID, to take note of the manner in which the investigation is conducted by the NIB-CID and to impart necessary special trainings in this regard.

16.This Court places its appreciation for the steps taken by the Narcotics Wing



CRLOP(MD)No.5908 of 2024

in Tamil Nadu. At the same time it must be borne in mind, arresting of the accused alone is not sufficient, the investigating agency has to find out the nexus of the particular accused with other accused, from whom the contraband is recovered. Then only the prosecution can succeed and it must be the ultimate object of the prosecution agency.

sd/-
30/04/2024

/ TRUE COPY /

/05/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK
TO

1.THE ADDITIONAL DISTRICT & SESSIONS JUDGE,
SPECIAL COURT FOR EC AND NDPS ACT CASES, PUDUKOTTAI.

2.THE INSPECTOR OF POLICE,
NIB-CID POLICE STATION,
SIVAGANGAI DISTRICT.

3.THE JUNIOR INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT.

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

5.THE SPECIAL PUBLIC PROSECUTOR FOR NCB,
MADURAI BENCH OF MADRAS HIGH COURT,

MADURAI

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



CRLOP(MD)No.5908 of 2024

COPY TO:

THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
NIB-CID,
CHENNAI.

+2 CC to M/s.A.BANUMATHY, Advocate (SR-5209 & 5210[I] dated 30/04/2024)

ORDER
IN

CRL OP(MD)Nos.5908 and 5935 of 2024

Date :30/04/2024

SA/GS/SAR. /03.05.2024/13P/9C

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