



Crl.OP(MD)Nos.7332, 7359 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.06.2024

PRONOUNCED ON : 08.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.OP(MD)Nos.7332, 7359 of 2024

Sharuk Raja : Petitioner in Crl.OP(MD)No.7332/2024

Kalimuthu : Petitioner in Crl.OP(MD)No.7359/2024

Vs.

State Rep. by
The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.
Cr.No.164 / 2023

: Respondent in both petitions

COMMON PRAYER: Petitions filed under Section 439 Cr.P.C seeking bail in connection with the case in Crime No.164 of 2023 on the file of the respondent police.



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For Petitioners : Mr.M.Jegadeesh Pandian
in Crl.OP(MD)No.7332/2024

: Mr.J.Joseph Zinson
in Crl.OP(MD)No.7359/2024

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON ORDER

The petitioners are accused nos.1 & 7 in Crime No.164 of 2023 on the file of the respondent Police, for the offence under the provisions of NDPS Act. They were arrested on 21.08.2023 and 10.05.2023, respectively. They have filed these petitions seeking bail.

2.The case of the prosecution is that on 08.05.2023, the Sub-Inspector of Police, on secret information, went to a private farm at Nadunallumoolai Kinaru Road and found a Bolero Pickup vehicle, bearing Reg.No.TN-92-E-6345. On seeing the police party, the persons who were in the spot managed to escape. The Police have conducted a search and found 120 kg



of Ganja, in three bags each weighing 40 kg. Based on the statement of one Ramesh S/o.Ayyadurai, the care-taker of the private farm, the respondent Police identified the persons absconded and registered the case.

3.Learned Counsel for the petitioners submitted that the petitioners were not at all present in the scene of occurrence. They were implicated based on the statement said to have been made by Ramesh, care-taker of the farm, from where the contraband was recovered. After that, some of the accused persons have been arrested and these petitioners have been implicated through the confession statement. Excepting the vague statement of the said Ramesh and the confession statements, there is no other material as against the petitioners.

4.Learned Additional Public Prosecutor, on instructions, submitted that the accused nos.1 to 3 came to the occurrence place in a vehicle, bearing Reg.No.TN-92-E-6345 and gave Rs.500/- to the care-taker of the farm, Ramesh, that they want to take bath and to clean their vehicle. Believing these words, Ramesh permitted them. After some time, the



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accused nos.4 to 8 came to the spot in another vehicle, bearing Reg.No.TN-92-D-5342. The accused nos.3, 4, 5 & 7 have left the place of occurrence in the vehicle bearing Reg.No.TN-92-D-5342 and the accused nos.1, 2 & 6 were loading the contraband in their vehicle. On seeing the police party, they fled away.

5.According to the learned Additional Public Prosecutor, the petitioners' names were mentioned in the FIR itself and all the accused have conspired together and illegally tried to smuggle the contraband through sea. He further submitted that the investigation in Crime No.164 of 2023 is completed, charge sheet has been laid and the same has been taken on file in C.C.No.160 of 2024 on the file of the Special Court for EC & NDPS Act Cases, Madurai.

6.This Court considered the rival submissions made on either side and the materials placed on record. This Court has also called for the CD file and perused the same.



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7.The contraband has been recovered by the Police from a vehicle bearing Reg.No.TN-92-E-6345 on 08.05.2023 in a private farm belonging to one Abibu. One Ayyadurai is the care-taker of the private farm. His son, Ramesh, is working as a Driver. He is said to have permitted the accused inside the farm on 08.05.2023 at about 01.45 pm, by receiving a sum of Rs.500/-. The accused is said to have approached the said Ramesh for the purpose of taking bath and to clean the vehicle. According to Ramesh, when this vehicle, Mahindra Bolero Pickup, is in the farm, another vehicle has also came to the farm and certain goods have been transferred from the first vehicle to the second vehicle. These goods are projected as the contraband, Ganja.

8.The respondent Police has recovered 120 kg of Ganja from the vehicle, bearing Reg.No.TN-92-E-6345. It is not known as to how the care-taker, Ramesh, could not sense the odour of the contraband, when such huge quantity was shifted from one vehicle to another. It is also not known as to how some strangers have been permitted to enter into a private farm,



without the knowledge of the farm owner, for the purpose of washing their vehicle, in the broad day-light.

9.Be that as it may, the fact remains that none of the accused persons were arrested from the spot. Though the contraband has been recovered from the private farm, the respondent Police has not conducted any investigation as to the role of the care-taker or the farm owner in the commission of offence, if any. It is not known as to whether the call details of the care-taker and the owner of the farm were verified. The investigation officer has also failed to conduct any investigation as to the location, from where the vehicle has originally come from. The investigation agency ought to have conducted a proper investigation and identified from the nearby check-posts as to when the vehicle crossed the check-post and how long the vehicle was in the farm.

10.The investigation agency has not collected any material as against the petitioners, excepting the confession statement and the statement of the care-taker, Ramesh, recorded u/s.161(3) CrPC. Admittedly, the accused



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are from a different place and it is not known as to how the care-taker, Ramesh, knew the names of the accused and also informed the same to the Police. To be noted, the names of the accused are mentioned in the FIR.

11.The quantity involved in this case is 120 kg of Ganja. For this much quantity of contraband, the respondent Police ought to have referred this case to the NIB-CID as per the Circular of the Director General of Police [HoPF] in Rc.No.187539/Crime 4(3)/2015, dated 23.06.2022. However, the respondent Police themselves have registered the case and filed the final report. The manner in which the investigation has been conducted by the respondent Police is not satisfactory.

12.Considering the materials available and the manner in which the investigation has been conducted, this Court is inclined to grant bail to the petitioners.

13.Accordingly, this criminal original petition is allowed and the petitioners are ordered to be released on bail



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i) on the petitioners executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judge, Special Court for EC & NDPS Act Cases, Madurai;

ii) the petitioners and the sureties shall submit a copy of their Aadhar Card or any other identity card issued by the Government in proof of their residential address;

iii) the petitioners shall appear before the Special Court for EC & NDPS Act Cases, Madurai, on every Monday, at 10.30 am, until further orders and shall co-operate for the trial;

iv) the petitioners shall not misuse the liberty granted to them by indulging in any further offence and shall not tamper with the prosecution witnesses;

v) on violation of any of the above conditions by the petitioner, the respondent Police shall move an application for cancellation of bail.

Internet : Yes
gk

08.08.2024

To

1.The Judge,
Special Court for EC & NDPS Act Cases,
Madurai.



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2.The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.

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



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B.PUGALENDHI, J.

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