



CRL OP(MD)No.8387 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 29.07.2024

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

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Ajith

... Petitioner/Petitioner/4th Accused

Versus

Intelligence Officer,
Narcotics Central Bureau,
Chennai Zonal Unit.

[NCB.F.No.48/1/2023/NCB MDS]

... Respondent/Respondent/Complainant

For Petitioner : Mr.K.P.Narayanakumar, Advocate

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for NCB cases.

PETITION FOR BAIL UNDER SEC 483 of BNSS

PRAYER :-

For Bail in NCB F.No.48/1/21/202/NCB MDS on the file of the respondent Police.

ORDER : The Court made the following order :-

The respondent police registered a case as against this petitioner in NCB F.No.48/1/21/2023/NCB MDS for the offence under Section 8(c) r/w. Section 20(b)

(ii)(C) and Sections 28 and 29 of NDPS Act and remanded him into judicial custody



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on 31.10.2023. Therefore, the petitioner has filed this petition seeking bail.

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2.The case of the prosecution is that based on the secret information, the Intelligence Officer conducted surveillance and found a Maruti Dezire Car bearing Reg.No.KA51 MR 4118 in front of the Kumbakonam Degree Coffee Cafe, Nallamanickenpatti village, Madurai - Kanyakumari Highways NH 44 and upon search, they found that A1 and A2 were in possession of 122.6 kgs of brownish green colour dried flowers crops and recovered the same from A1 and A2. Based on the information given by A1 and A2, the Intelligence Officer also arrested A3 and A4, who escorted the car bearing Reg.No.KA51 MR 4118. Hence the complaint was lodged.

3.The learned Counsel for the petitioner submits the petitioner is a Driver by profession and he is working in a hotel. He has been engaged by the 3rd accused to drive his car bearing registration No.KL 60 A 6716. The respondent police though claimed that they have recovered ganja from another vehicle bearing registration No. KA 51 MR 4118 on 29.10.2023, they have not recovered any contraband from the petitioner's vehicle. He is neither the owner of the car nor any contraband was recovered from the petitioner's vehicle. However he has also been added as an accused that he has escorted the vehicle bearing registration No.KA 51 MR 4118.

4.The learned Counsel for the petitioner has emphasised two points in support



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of this application that there was no recovery from the petitioner's vehicle and the petitioner was arrested on 29.10.2023 and therefore, the statutory period for filing the final report on 180 days expires on 28.04.2024 and he is entitled for the statutory bail under Section 167(2) CrPC. He also submits that even according to the prosecution case the petitioner was hired by A-3 by paying him a sum of Rs.10,000/-. He has been languishing in jail for more than 200 days and there is no bad antecedent as against this petitioner. He has also relied on the judgment of the Hon'ble Supreme Court in Ravindran Vs Intelligence Officer, Directorate Revenue Intelligence reported in 2020 4 MLJ (Crl) 459 SC.

5.He has also referred to the judgment of the Hon'ble Supreme Court in the case of Enforcement Directorate, Government of India Vs Kapil Wadhawan and another reported in 2023 Livelaw SC 249 and submits that once the respondent failed to file the final report within the statutory period, then the indefeasible right has been accrued on the accused. Whenever there is any ambiguity in the construction of the statutory period, the interpretation must lean towards the accused and the right to default bail is not extinguished by the subsequent filing of the charge sheet. The Hon'ble Supreme Court in the above said judgment has held as follows:

“We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when the Magistrate



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authorises remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorised detention beyond the period envisaged under Section 167 CrPC. In cases where the charge sheet / final report is filed on or after the 61st / 91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."

6.The learned Special Public Prosecutor appearing for the respondent submits that this is the 2nd bail application filed by this petitioner and the earlier bail application filed by this petitioner in CrIOP(MD)No.5948 of 2024 was dismissed by this court on 26.04.2024 on merits and there is no change in circumstances. According to him, the quantity of contraband involved in this case is 122.6kgs of ganja, which is a commercial quantity. Therefore, he is not entitled for bail as per Section 37 of the NDPS Act.

7.He further submits that the petitioner is also actively involved in the commission of offence and when he was arrested on 30.10.2023, he has voluntarily given a statement under Section 67 of the NDPS Act that the A 3 in this case is his childhood friend and he is having the full knowledge about the commission of



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offence.³ The contraband was procured from Andhra Pradesh and that was transported in Maruti Dezire vehicle bearing registration No. KA 51 MR 4118. The petitioner was engaged to monitor the movements of the police. He has escorted the vehicle from Bangalore to Virudhunagar border.

8.He further submits that he is not an innocent. He has escorted the vehicle which carried the contraband. It is not necessary that the contraband has to be recovered from the physical possession of the accused. Law recognises two kinds of possession (1)actual possession and (2) constructive possession. Having direct physical control is defined actual possession over a thing at a given time. The constructive possession means if the person has control or domain over a thing either directly or through other person, the person is in constructive possession. In this regard he has relied on the judgments of the Hon'ble Supreme Court in Balbir Kaur Vs State of Punjab (Criminal Appeal No.2108 of 2008); and Gunawantlal Vs State of Madhya Pradesh reported in (1972) 2 SCC 194, wherein the Hon'ble Supreme Court has held as under:

“the possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given hold its subject to that power or control”



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9. Therefore according to him, there need not be any physical possession as claimed by the petitioner, and the possession can also be a constructive possession, having power and control over the contraband, as the petitioner has in this case.

10. He also submits that as per Section 35 of the NDPS Act, there is a presumption of culpable mental state and it is for the accused to prove in the trial that he had no such mental state with respect to the act charged as an offence. The burden of proof lies on the accused. There is no reasonable ground for the court to believe that the petitioner is not guilty. He has also relied on the Hon'ble Supreme Court in the case of Gian Chand and Others Vs State of Haryana reported in (2013) 14 SCC 420 and submitted that once possession of contraband material with the accused is established, the provision of Section 106 of the Evidence Act gets attracted and it is for the accused to establish how he came to be in possession of the same as it is within his special knowledge.

11. The learned Special Public Prosecutor has also relied the judgments in Union of India Through Narcotic Control Bureau, Lucknow Vs Mohamed Nawaz Khan reported in (2021) 10 SCC 100 and Union of India Vs Ajay Kumar Singh reported in 2023 SCC Online SC 346 and submits that the absence of possession of contraband on the accused would not dilute the level of scrutiny required under Section 37(i) (b)(2) of NDPS Act.



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12. With regard to the other ground raised by the learned Counsel for the petitioner on the entitlement of the statutory bail under Section 167(2) CrPC, the learned Special Public Prosecutor submits that the petitioner has wrongly projected the date of arrest as 29.10.2023, but the petitioner was arrested only on 30.10.2023 and was remanded on 31.10.2023. According to him the 180th day from the date of remand expired on 28.04.2024, which was a Sunday. Even before that, final report was filed before the Principal Special Court for EC and NDPS Act Cases Madurai on 26.04.2024 through e-filing. However a copy of the same was also physically filed on 29.04.2024, this is projected by the petitioner as if the final report was filed beyond the statutory period. According to him the respondent filed the final report through e-filing on the 179th day from the date of the remand and he has also provided the calculation as under:

31.10.2023 (date of remand)	1
01.11.2023 to 30.11.2023	30
01.12.2023 to 31.12.2023	31
01.01.2024 to 31.01.2024	31
01.02.2024 to 29.02.2024	29
01.03.2024 to 31.03.2024	31
01.04.2024 to 26.04.2024 (Date on which e-filing was done)	26
Total	179



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13.The learned Special Government Pleader has also relied on the judgment of this Court in Varun and another Vs. State of Tamil Nadu in CrIOP.No.901 of 2024 and submits that e-filing of the final report can be calculated to arrive at the statutory period. This Court in the above cited judgment has held that e-filing mechanism is recognised as a mode of filing, obviously the date of e-filing must be taken to be the date of filing. The Court further emphasised that at the time filing, the papers are on a soft copy mode and later, it translates itself into a hard copy and so the date on which the hard copy is brought before the Court cannot be taken to be the date of filing and in every case, the date of filing can only be the date on which the e-filing is done.

14.The learned Special Public Prosecutor has also relied on the judgment of the Hon'ble Supreme Court in Ravindran VS the Intelligence Officer, DRI reported in Manu/SC/0788/2020 and submits that even when the final report was filed after 180 days, if the petitioner has not filed any application seeking default bail and subsequently charge sheet is filed the right of bail would be extinguished. The NDPS Act also enables the Magistrate either to take cognisance of the offence or to grant further time to complete the investigation. Therefore, the contention of the petitioner cannot be accepted.

15.This Court considered the rival submissions made and also perused the materials placed on record.



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16. Considering the submission made on behalf of the petitioner, this Court has called for a report from the Special Court for EC and NDPS Act Cases, Madurai with regard to the date of arrest and remand of the petitioner and the date of filing of the final report. A report is submitted by the learned Special Judge that the petitioner / A4 was arrested on 30.10.2023, remanded to judicial custody on 31.10.2023 and the investigating agency has filed the final report on 29.04.2024 and the statutory period of 180 days expired on 28.04.2024.

17. The learned Special Public Prosecutor has produced the document for having filed the final report through e-filing on 26.04.2024 and therefore, this Court has also called for a report and also collected the final report filed by the respondent police before the Special Court for EC and NDPS Act Cases, Madurai. The documents placed before this Court reveals that the final report was filed through e-filing on 26.04.2024. The final report was also taken on file in CC.No.136 of 2024. Insofar as the merits of the case is concerned, this Court has already accepted the contention of the learned Special Public Prosecutor that though the contraband was not recovered from this petitioner, he is having the knowledge of the contraband and he has also escorted the contraband from Bangalore to Virudhunagar.

18. Since the quantity involved in this case is a commercial one, the earlier bail application was dismissed on merits and also the plea of this petitioner on the right of



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statutory bail cannot be granted in view of the discussion held above, this criminal

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original petition is dismissed.

sd/-

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/08/2024

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

DSK

TO

- 1 THE INTELLIGENCE OFFICER,
NARCOTICS CENTRAL BUREAU, CHENNAI ZONAL UNIT.
- 2 THE OFFICER INCHARGE
DISTRICT JAIL, MADURAI.
- 3 THE SPECIAL PUBLIC PROSECUTOR FOR NCB CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-9029[I] dated 31/07/2024)

ORDER IN

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Date :29/07/2024

RS/GS/SAR-(07.08.2024) 10P 5C

Madurai Bench of Madras High Court is issuing
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