



Crl.M.P.(MD) No.12025 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	20.11.2024
Delivered on	22.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) Nos.11899 and 12045 of 2024
and
Crl.M.P.(MD) No.12025 of 2024

Crl.O.P.(MD) No.11899 of 2024

Thirumanikumaran

... Petitioner

Vs.

The Inspector of Police,
PEW Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.584 of 2023)

... Respondent/Complainant

Crl.O.P.(MD) No.12045 of 2024

Mookandi @ Raja

... Petitioner

Vs.

The Inspector of Police,
PEW Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.584 of 2023)

... Respondent/Complainant



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COMMON PRAYER :

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, for bail in Crime No.584 of 2023 on the file of the Respondent Police.

For Petitioners : Mr.A.S.Abul Kalaam Azad
in Crl.O.P. (MD) No.11899 of 2024

Mr.J.David Ganesan
in Crl.O.P. (MD) No.12045 of 2024

For Respondent : Mr.S.Ravi, Additional Public Prosecutor
(in both petitions)

COMMON ORDER

The petitioners, who were arrested and remanded to judicial custody on 29.08.2023 for the offences under Sections 8(C) r/w 20(b)(ii)(c), 25 and 29(i) of the Narcotic Drugs and Psychotropic Substances Act 1985, on the file of the respondent, seek bail.

2.The case of the prosecution is that the Inspector of Police attached to the respondent police received an information on 28.08.2023 at about 01.00 p.m., that A1 along with his wife and other accused persons have purchased 'Ganja' from Andhra Pradesh and have stored it at Puducherry and they are going to smuggle the same to Sri Lanka via Thoothukudi. This information was reduced into writing and recorded in the General Diary. The police team proceeded to the spot near Puthur Pandiapuram. Two innova cars and a bike were intercepted. A1 to A7 were travelling in one car and A10 to A16 were travelling in the other car. A8 and A9 were travelling



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in the two-wheeler. The Inspector of Police informed the rights of the accused persons to be searched in the presence of gazetted officer or Judicial Magistrate and since they did not opt for the same, the search was conducted and totally 228 kilograms of ganja was seized/recovered and the accused persons were arrested and remanded to judicial custody. The petitioners herein are A4 and A8 respectively.

3.The petitioner in Crl.O.P. (MD) No.12045 of 2024 took a specific stand that he was picked up one day prior to the date of occurrence from his house and he was not travelling in the car as alleged by the respondent police. To substantiate the same, the petitioner was relying upon photographs and CCTV footage recorded in the pendrive.

4.In the light of the above stand taken, this Court passed the following order on 01.10.2024:

“In these cases, it is the specific case of the petitioner that he was picked up one day prior to the date of occurrence and that he is taken to the police station and thereafter, he was included with the other accused, as if, he also travelled along with the other accused when the contraband was recovered.

2.Earlier, when the matter came up for hearing, it was represented by the respondent police that the photograph is not visible. Therefore, on the last vacation, this Court directed the petitioner to give the video footage. The Court could view the



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video very clearly from the device.

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3.Today also, the respondent police has come up with a counter affidavit by stating that upon enlargement the images of the persons are broken and are not visible. However, today the learned counsel for the petitioner has filed an additional typed set of papers, in which the enlarged colour print out of the images are filed. According to the petitioner, he was taken in a two-wheeler by one police constable, namely, Mr.Thirumani and there is one more police constable, who was sitting behind him whose name he does not know. Apart from the bike in which they travelled, two other police persons, namely, Mr.Samuel and Mr.Manikaraja also followed them in yet another two-wheeler. Both the two-wheelers are clearly visible in the CCTV footage which is retrieved.

4.In that view of the matter, since now the petitioner has also given the specific names of the police constables who took him, the respondent cannot repeatedly plead that the video is not visible. Today, the copy of the additional typed set of papers is also served on the learned Additional Public Prosecutor. The Superintendent of Police, NIC, Thoothukudi, is directed to forthwith conduct an enquiry and file a report before this court on 04.10.2024.

5.Post the case on 04.10.2024. ”

5.Pursuant to the above order, the Superintendent of Police, Prohibition



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Enforcement Wing, filed an affidavit before this Court. The relevant portions are extracted hereunder:

“9.It is respectfully submit that the father of the petitioner / accused No. 4 namely M.Chinnadurai has sent a representation to the Inspector General of Police South Zone Madurai on 24.06.2024 by stating that this petitioner / accused no.4 was not arrested by the Respondent Police on place stipulated in the FIR and he was brought by the Special Team Sub-Inspector and 4 other Constables on 27.08.2023 and the same has reflected in the CCTV Footage and two photographs also sent by the above said Chinnadurai.

10. It is respectfully submit that as a matter of fact the two photographs which have sent by the father of the petitioner / accused no.4 are not visible. The above said two photographs have not clearly identified the persons who are sitting in the motorcycle and the place has also not clearly visible which the photographs are taken.

11. It is most respectfully submit that this respondent is zooming the above said photographs, even after that the faces of the persons who are sitting in the motorcycle could not be identified. Hence only after receiving the clear pictures of the said two photographs. the respondent can be identified the persons who are sitting in the motorcycle.



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12. It is most respectfully submit that the pen-drive and photographs have been sent to the Deputy Director, Computer Division, Forensic Science Department and after examining the photographs and pen- drive, it was informed that the photographs and pen-drives were enlarged to identify the person but unfortunately the faces of the persons have broken and not visible.

13. It is most respectfully further submit that on 28.09.2024 the father of the petitioner / accused no.4 has duly called upon and explained the nature of the video graph and obtained a statement. The father of petitioner / accused No.4, was clearly explained that while the photographs and the videograph in the pen-drive were examined by the Sub-Inspector (Technical) and the Officer informed that both in the photographs and the video in the pen-drive are not visible to identify the person who is in the above pen-drive and photographs. The father of the petitioner / accused no.4 has accepted the above and given his assent."

6.The learned counsel for the petitioner in Crl.O.P.(MD) No.12045 of 2024 submitted that there are sufficient materials to show that the petitioner has been picked up one day prior to the date of occurrence from his house and therefore, the case as projected by the prosecution is false insofar as the petitioner is concerned.

7.The petitioner in Crl.O.P.(MD) No.11899 of 2024 submitted that he was also not present in the scene of occurrence and he was also picked up one day prior to the



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date of occurrence. The learned counsel further submitted that the petitioner has suffered incarceration from 29.08.2023 and the final report has already been filed before the concerned Court and that the petitioner will comply with any conditions imposed by this Court.

8.Per contra, the learned Additional Public Prosecutor vehemently opposed the grant of bail to the petitioners. The learned Additional Public Prosecutor submitted that the petitioner in Crl.O.P. (MD) No.12045 of 2024 was picked up by the police belonging to the Thoothukudi North Police Station in relation to the investigation in Crime No.247 of 2023 on 27.08.2023 and the petitioner was released after the enquiry. That apart, the learned Additional Public Prosecutor also heavily relied upon the photographs that were taken at the time of recovery in which the presence of the petitioner is seen. The learned Additional Public Prosecutor submitted that in the instant case, totally 228 kilograms of ganja is involved and the factual determination as to whether the petitioner was present at the place of recovery, cannot be gone into in this bail petition.

9.The learned Additional Public Prosecutor further submitted that the petitioner in Crl.O.P. (MD) No.11899 of 2024, who has been arrayed as A8, was the occupant in the two-wheeler and they were part of the team conducting the surveillance. The learned Additional Public Prosecutor also strongly relied upon the earlier order



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passed by this Court in Crl.O.P.(MD) No.11135 of 2024 etc., dated 20.09.2024, where the bail petition filed by the other accused persons was dismissed by this Court and a direction was also given to expedite the trial and to complete the same within a period of three months.

10.This Court has carefully considered the submission made on either side and the materials available on record.

11.The main ground that was urged by the learned counsel appearing in both the petitions is that they were not even present in the spot where the recovery was made and that they had been taken into custody one day prior to the date of occurrence and therefore a false case has been foisted against these petitioners.

12.Insofar as the petitioner in Crl.O.P.(MD) No.12045 of 2024, his case is that he was not in the spot and that he was taken into custody one day prior to the date of occurrence and the same is evident from the photographs and the CCTV footages that were recorded in the pendrive.

13.The Deputy Superintendent of Police, Prohibition Enforcement Wing, filed two reports before this Court. In both the reports, a specific stand was taken to the effect that the photographs and the CCTV footage were not clearly visible and hence, the identity of the petitioner on 27.08.2023 cannot be ascertained. Thereafter, pursuant to the orders passed by this Court on 01.10.2024, the Superintendent of



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Police has filed an affidavit to the effect that the persons found in the CCTC footage were identified and out of three persons who were found in the motor bike, petitioner was sitting in the middle. Thus, the fact that the petitioner was taken for investigation on 27.08.2023 has been substantiated. However, a specific stand has been taken to the effect that the petitioner was taken for enquiry in connection with Crime No.247 of 2023 which was registered by the Thoothukudi North Police Station. On the same date, the petitioner was also released on completion of enquiry. The two police personnel, who were found in the two-wheeler were identified as belonging to Thoothukudi North Police Station.

14.The incident had taken place on 28.08.2023. The respondent police has taken a stand that they were not aware about the enquiry that was conducted by the Thoothukudi North Police Station, the previous day and that the petitioner was very much available in the car and he along with the other accused person were arrested from that spot. To substantiate the same, the photographs that have been taken from the spot where the recovery took place, is relied upon. In this photograph, the petitioner is also clearly seen.

15.In view of the above, there are now two sets of photographs that are placed before this Court. The issue involved is purely factual in nature and it requires letting in evidence. This Court while deciding the bail petition cannot conduct a mini trial



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and give any finding to the effect that the petitioner was not present on the spot without recording any evidence and by merely relying upon the photographs and CCTV footage. If such exercise is undertaken, it will go beyond the scope of deciding a bail petition.

16.Insofar as the petitioner in Crl.O.P.(MD) No.11899 of 2024, except for the ipse dixit of the petitioner that he was picked up one day prior to the date of occurrence, there is nothing much to substantiate the same.

17.The gravity of the offence committed in this case and the enormous quantity that was recovered was dealt with in detail by this Court while dismissing the bail petitions filed by the other accused persons in Crl.O.P.(MD) Nos.11135 of 2024 etc. Even in those petitions, a stand was taken to the effect that a false case has been foisted and that the accused persons were not arrested from the spot where the contraband is alleged to have been seized. This Court held that it is a matter for trial and the same cannot be gone into in the bail petition. This Court gave a specific finding that the rigour of Section 37 of the NDPS Act has not been fulfilled and accordingly, the bail petitions were dismissed and a direction was given to dispose of the main case within the stipulated time.

18.In fine, this Court holds that the petitioners have not fulfilled the requirements of the rigour of the Section 37 of the NDPS Act. That apart, this Court



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also considers the huge quantity that was seized in this case and which was attempted to be transported to Sri Lanka from Thoothukudi. Just because the petitioners have suffered long incarceration, that by itself is not a factor to let them out on bail. This Court had already fixed the time frame to the trial Court to complete the proceedings. Hence, the grounds that have been raised by the petitioners has to be established only before the trial Court.

19.In the result, both these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

22.11.2024

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/01/2025

Sub Assistant Registrar(CS I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai.

PKN

To

1.The Inspector of Police,
PEW Police Station,
Thoothukudi, Thoothukudi District.

2.The Superintendent,
Central Prison, Palayamkottai.



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3.The Superintendent, Central Prison, Madurai.

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

+1 CC to M/s.SPICY LAW FIRM, Advocate (SR-67424[F] dated 22/11/2024)

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Dated : 22.11.2024

RS/GSV/SAR (17.01.2025) 12P 6C
Madurai Bench of Madras High Court is issuing
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