



CRL OP(MD). Nos.20151 and 20162 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 11.12.2024

PRESENT

The Hon`ble Mr.Justice N.ANAND VENKATESH

CRL OP(MD). Nos.20151 and 20162 of 2024

S.Ajithkumar,

... Petitioner / Accused No.5
(in Crl.OP(MD).No.20151 of 2024)

E.Esakkiraja,

... Petitioner / Accused No.7
(in Crl.OP(MD).No.20162 of 2024)

Vs

The State of Tamil Nadu
represented by the Inspector of Police,
Pettai Police Station,
Tirunelveli District.
(Crime No.7 of 2024)

... Respondent / Complainant
(in both cases)

For Petitioners: Mr.M.Jegadeesa Pandian, Advocate.
for Mr.NA.Manimaran,Advocate.
(in both cases)

For Respondent : Mr.S.Ravi,
(in both cases) Additional Public Prosecutor (Criminal Side)

PETITIONS FOR BAIL Under Sec.483 of BNSS,2023.



COMMON PRAYER :- For Bail in Crime No.7 of 2024 on the file of the respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners / Accused Nos.5 & 7, who were arrested and remanded to judicial custody on 07.01.2024 for the alleged offences under Sections 8(c) r/w. 20(b)(ii)(c), 29(ii)(A) and 25 of NDPS Act, in Crime No.7 of 2024, on the file of the respondent police, seek bail.

2. The case of the prosecution is that the Sub-Inspector of Police received an information on 06.01.2024 at about 22.30 hours that some attempt is being made to sell ganja. This information was recorded in the General Diary and a police team was formed and on reaching the spot, the police team found a white colour scorpio car and two pulsar motor bikes. Some persons were seated inside the car. They were identified as A3 to A7. On enquiry, it was ascertained that A1 had sent A2 to Andhra Pradesh to purchase huge quantities of ganja and he was instructed to sell the same to A4 to A7. A3 came to the spot in scorpio car and A4 to A7 came in two motor bikes for the purpose of purchasing ganja. Since the accused persons waived their right under Section 50 of NDPS Act, the car was searched and two bags were found, out of which, 1 bag contained 14.200 kgs of ganja and another bag contained 10.800 kgs of ganja. Thereafter, an FIR was registered. There are totally 8 accused persons in this case and the petitioners have been arrayed as A4 and A6.



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3. The learned counsel for the petitioners submitted that a false case has been foisted against the petitioners. He further submitted that there is violation of non-compliance under Section 52A of the NDPS Act, and there is an unexplained delay in producing the seized ganja both before the Court and the FSL. He further submitted that since there is a mandatory violation and the petitioners have suffered incarceration from 07.01.2024 and the investigation has already been completed and the trial is yet to commence. The learned counsel requested this Court to enlarge the petitioners on bail by imposing any conditions.

4. Per contra, the learned Additional Public Prosecutor (Criminal Side), relying on the counter affidavit filed by the respondent, submitted that insofar as the petitioners are concerned, they were caught red handed since they were present inside the car from which 25 kgs of ganja was seized by the police. The learned Additional Public Prosecutor further submitted that there was absolutely no delay in producing the contraband before the Court and in fact, the contraband was produced before the Court under Form 91 when the accused persons were brought before the Court seeking for judicial custody. On directions given by the Court, the contraband was deposited in MALCANA and thereafter, it was once again brought before the Court and the samples were drawn in the presence of the learned Magistrate by strictly following the procedure under Section 52A of NDPS Act. The next day it was



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sent for analysis and the report was received. The learned Additional Public Prosecutor submitted that the investigation has been completed and the police report has been filed and it has been taken on file in C.C. No.209 of 2024 by the learned Special Principal District and Sessions Court for EC and NDPS Act cases, Madurai. He further submitted that even though, there are no previous cases against the petitioners, there is no mandatory violation in this case and therefore considering the quantity involved in this case which is a commercial quantity, the petitioners have not satisfied the twin conditions and therefore, they do not have a right to be enlarged on bail. Accordingly, the learned Additional Public Prosecutor sought for the dismissal of these petitions.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. There are totally 8 accused persons in this case and the petitioners have been arrayed as A4 and A6. The specific case of the prosecution is that based on instructions of A1, A2 had procured the ganja from Andra Pradesh and it was carried by A3 in a car with an intention to sell the same to A4 to A7. A4 to A7 are said to have to the spot in two motor bikes and parked these motor bikes near the car which was driven by A3. When they were inside the car, the police team is said to have surrounded the car and there was recovery of 2 bags, out of which, one bag contained



14.200 grams of ganja and other contained 10.800 grams of ganja. This recovery took place on 07.01.2024. Even though the counter affidavit does not state as to when the contraband was taken before the Magistrate, the learned Additional Public Prosecutor confirmed the fact that the contraband was produced before the Magistrate with Form 91 when the accused persons, who were arrested, were brought before the Court seeking for judicial custody. Thereafter, the contraband was deposited in the MALCANA.

7. The investigation has been completed and the police report has been filed in this case. It is therefore relevant to take note of Section 161 statement recorded from LW13. He is a Head Constable who states that he was assisting the Inspector of Police in preparing requisition letter and producing contraband before the Court on 03.05.2024. He further states that the samples were taken in the presence of the learned Magistrate from each bag in compliance with Section 52A of NDPS Act. Thereafter, the letter from the Court was received on 13.05.2024 and the samples reached the FSL on 14.05.2024. The date on which the samples reached the FSL is quite evident from the Forensic examination report. The samples were examined on 16.05.2024 and the report was given on the same day.

8. Thus, it can be seen that even though, the contraband was seized on 07.01.2024, it came before the Court for drawing of samples on 03.05.2024 and



whereas, the requisition was made to the FSL on 13.05.2024 and according to LW13, it reached the FSL on 16.05.2024. However, the FSL report shows that it was received on 14.05.2024.

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9. In view of the above, there is a prima facie case for the petitioners to put forth their contentions with respect to the delay in the contraband reaching the FSL and the contradiction in the dates on when it was received by the FSL. This directly touches upon the compliance of Section 52 A of NDPS Act.

10. In the light of the above prima facie finding, this Court is convinced that the twin conditions under Section 37 of NDPS Act is satisfied. This Court also takes into consideration the fact that the petitioners do not have any previous cases and they were arrested and remanded to judicial custody on 07.01.2024 and the probability of the case being disposed of in the near future is also unlikely. In view of the same, this Court is inclined to enlarge the petitioners on bail subject to the following conditions:

11. Accordingly, the petitioners are ordered to be released on bail on their executing 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 Principal District and Sessions Judge for EC and NDPS Act Cases, Madurai, and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the



surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the learned Special Principal District and Sessions Judge for EC and NDPS Act Cases, Madurai during every date of hearing without fail.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner 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].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS, 2023.

12. Before drawing the curtains, one of the grievance that was expressed by the learned Additional Public Prosecutor is that in many cases, the contraband that is seized is produced before the learned Magistrate under Form 91 along with the accused persons who are arrested and produced before the Court for remand to



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judicial custody. However, invariably, no Magistrate takes immediate steps for drawing of samples in their presence to enable the same to be taken to the FSL for the report. This delay that is caused is taken advantage by the accused persons in every case. The learned Additional Public Prosecutor submitted that even in the instant case, even though the contraband was produced before the Magistrate immediately, the substantial delay has now resulted in the accused persons being granted bail on the ground that Section 52A of NDPS Act has not been complied with. The learned Additional Public Prosecutor therefore requested this Court to issue directions to the learned Magistrates to take immediate steps for drawing of samples in their presence in compliance with Section 52 A of NDPS Act after the contraband is produced before the Court.

13. Insofar as the NDPS offences are concerned, the direct interest of the society is involved and that is the reason why the Courts take a very strict view even while considering the bail application. Ultimately, in cases involving commercial quantity, twin conditions are imposed under Section 37 of NDPS Act and hence, the accused person who is arrested, must be able to show that there is some mandatory violation which ultimately will enure in favour of the accused person. This Court is able to see that in many cases, one of the major violation that is pointed out is non-compliance of Section 52A of the NDPS Act. There is a substantial delay in drawing samples in



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many cases, resulting in delayed submission of samples to the FSL. Therefore, in a given case which involves huge quantity of contraband being seized, the police must not be put to a disadvantage for the delay on the part of the Court in drawing samples.

14. In view of the above, there shall be a direction to all the learned Judicial Magistrates to ensure that samples are drawn by the police in their presence at the earliest point of time after the contraband is produced before the Court. In no case, it should exceed a period of more than 3 days from the date on which the contraband is produced before the Court. The samples that are drawn must also be immediately sent to the FSL with a requisition letter for getting the report. Such immediate measures will ensure that Section 52A of NDPS Act is complied with. The delay in producing the contraband before the Court and the delay in drawing samples and sending the same for analysis to FSL, cuts both ways. On the one hand it will give an undue advantage for the accused persons and on the other hand, it can also pave way for fixing the accused persons by procuring the contraband elsewhere and producing the same before the Court as if it was seized in that particular case. In any event, drawing of samples from the contraband seized at the earliest point of time will ensure genuineness in a given case. Therefore, this direction must be strictly followed. The copy of the order shall be marked to the learned Principal District



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Judges of all the Districts across the state of Tamil Nadu in order to ensure
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compliance.

15. In the result, these criminal original petitions are allowed.

sd/-
11/12/2024

/ TRUE COPY /

11/12/2024
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL
TO

1 THE SPECIAL PRINCIPAL DISTRICT AND SESSIONS JUDGE
FOR EC AND NDPS ACT CASES,
MADURAI

2 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE,
PETTAI POLICE STATION,
TIRUNELVELI DISTRICT.

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

COPY TO:

1.THE PRINCIPAL DISTRICT JUDGE,
CHENNAI.

2.THE PRINCIPAL DISTRICT JUDGE,
ARIYALUR.



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3.THE PRINCIPAL DISTRICT JUDGE,
COIMBATORE.

4.THE PRINCIPAL DISTRICT JUDGE,
CUDDALORE.

5.THE PRINCIPAL DISTRICT JUDGE,
DHARMAPURI.

6.THE PRINCIPAL DISTRICT JUDGE,
ERODE.

7.THE PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU.

8.THE PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM.

9.THE PRINCIPAL DISTRICT JUDGE,
KRISHNAGIRI.

10.THE PRINCIPAL DISTRICT JUDGE,
NAGAPATTINAM.

11.THE PRINCIPAL DISTRICT JUDGE,
MAYILADUTHURAI.

12.THE PRINCIPAL DISTRICT JUDGE,
NAMAKKAL.

13.THE PRINCIPAL DISTRICT JUDGE,
PERAMBALUR.

14.THE PRINCIPAL DISTRICT JUDGE,
SALEM.



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15.THE PRINCIPAL DISTRICT JUDGE,
THE NILGIRIS.

16.THE PRINCIPAL DISTRICT JUDGE,
THIRUPPUR.

17.THE PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR.

18.THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI.

19.THE PRINCIPAL DISTRICT JUDGE,
TIRUVARUR.

20.THE PRINCIPAL DISTRICT JUDGE,
VELLORE.

21.THE PRINCIPAL DISTRICT JUDGE,
VILLUPURAM.

22.THE PRINCIPAL DISTRICT JUDGE,
KALLAKURICHI.

23.THE PRINCIPAL DISTRICT JUDGE,
PUDUCHERRY.

24.THE PRINCIPAL DISTRICT JUDGE,
TIRUPATHUR.

25.THE PRINCIPAL DISTRICT JUDGE,
RANIPET.

26.THE PRINCIPAL DISTRICT JUDGE,
DINDIGUL.

27.THE PRINCIPAL DISTRICT JUDGE,
KANYAKUMARI.

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



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28.THE PRINCIPAL DISTRICT JUDGE,
KARUR.

29.THE PRINCIPAL DISTRICT JUDGE,
MADURAI.

30.THE PRINCIPAL DISTRICT JUDGE,
PUDUKOTTAI.

31.THE PRINCIPAL DISTRICT JUDGE,
RAMNAD.

32.THE PRINCIPAL DISTRICT JUDGE,
SIVAGANGAI.

33.THE PRINCIPAL DISTRICT JUDGE,
THANJAVUR.

34.THE PRINCIPAL DISTRICT JUDGE,
THENI.

35.THE PRINCIPAL DISTRICT JUDGE,
THOOTHUKUDI.

36.THE PRINCIPAL DISTRICT JUDGE,
THIRUCHIRAPPALLI.

37.THE PRINCIPAL DISTRICT JUDGE,
TIRUNELVELI.

38.THE PRINCIPAL DISTRICT JUDGE,
TENKASI.

39.THE PRINCIPAL DISTRICT JUDGE,
VIRUDHUNAGAR.



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ORDER
IN
CRL OP(MD). Nos.20151 and 20162 of 2024
Date :11/12/2024

SA/SAR. /11.12.2024/14P/44C

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