

In the court of the Principal Special Court for EC & NDPS Act Cases, Madurai.

Present : Thiru.V.Padmanabhan, M.A., M.L. D.H.
Additional District Judge / Presiding Officer.

Dated this the 11 th Day of September 2020, Friday

Special Crl.M.P.No. 422 of 2020

...

Kasimayan,(27/2020)
S/o.Mokkamayan

.. Petitioner/Accused.

/Versus/

State through the Inspector of Police,
Sindhupatti Police Station,
Cr.No.38/202

.. Respondent/Complainant.

This bail petition is filed through online/e-mail, and taken on file on 25.08.2020 coming on this court, finally on this day in the presence of Thiru. D.Senthilrajan, Advocate for the petitioner and Thiru. P.Seetharaman, Special Public Prosecutor and upon perusing the records this court delivered the following:

ORDER

1) Heard both sides through conference call.

2) The learned Counsel appearing for the petitioner/accused would submit that the petitioner has been in judicial custody from 18.02.2020 and charged for the alleged offence under section 8 (c) r/w 20 (b) (ii) (C), 25 & 29(1) of NDPS Act; that the petitioner did not involve in this case incident as alleged on prosecution side; no details as to manner of information received, and from where it was received was not stated in FIR; that the procedure S.42(2) of NDPS Act was not followed; that after arrest of accused alleged confession recorded and seizure effected; that the petitioner is an innocent person; that if the petitioner is released on bail he will abide the conditions of this court and that he may be released on bail.

3) On the other hand, in the objections filed and also during arguments on prosecution side, it is stated that the quantity involved in this case is 120 kgs of ganja; that after receipt of information the concerned Inspector of Police proceeded to the spot along with his team where he stopped two motor cycles and one auto in which the accused

persons are coming; that thereafter he recovered contraband from the auto and also recorded confession statement of first accused; that three accused are absconded; that investigation is pending; that if the petitioner is released on bail he will again involve in similar nature of offence and that petition may be dismissed.

4) The learned Counsel appearing for the petitioner has raised a point that the FIR does not disclose the manner in which secret information was received and recording of it. This court cannot give much importance to this point at this stage for the reasons discussed below.

5) According to S.42 as soon as, the information was received as to alleged offence it is duty of the concerned officer to send the same to his superior officer within 72 hours after recording it in writing. According to prosecution, the search and recovery were said to have been made in public place. It is relevant to indicate that as per section S.43, the compliance of S.42 would not arise if search was made in public place. Moreover, the FIR need not be an encyclopedia. Therefore, before trial this court cannot hold that S.42(2) of NDPS Act was not complied with. It is for the trial, to decide after getting evidence from prosecution and defense.

6) The learned Counsel for the petitioner further argued that as per prosecution contraband was recovered only from auto and no contraband was recovered from the motor cycles and that the accused persons who came in motor cycles are no way connected with the incident. This argument is not sustainable. In the spot the concerned Inspector of Police recorded the confession statement from the first accused. A cursory look on the confession statement of first accused and also statement of sixth accused would reveal the involvement of remaining accused persons in the incident. FIR was registered against the accused among other penal sections u/S 29(1) of NDPS Act. Here, the role of the petitioner cannot be segregated. In such circumstances, this court is not able to give much importance to the said arguments put forth on petitioner side.

7) Finally, the learned Counsel contended that alleged confession was recorded after arrest and thereafter only seizure was effected and it is not admissible in law. Only after getting evidence from prosecution and defense this court can decide whether confession statement of one accused can be used against the co-accused and whether co-accused

persons can be brought under penal sections based on co-accused's confession. The material on record indicate that this petitioner was available at occurrence place along with main accused and contraband was said to have been recovered from the offending vehicle. Here, the participation of this petitioner in the alleged offence based on this material cannot be ruled out. In such circumstances, the argument of petitioner is not sustainable.

8) From perusal of entire case records, at this stage prima facie material is available to show that the petitioner and co-accused persons came in a offending vehicle and contraband totally weighing 120 kgs was recovered from the offending auto.

9) For granting bail in a case involving commercial quantity under NDPS Act, satisfaction in terms of section 37 of NDPS Act must be recorded. As discussed above, the accused did not put forth any reasonable grounds for belief that he is not guilty of offence and he is not likely to commit the offence on bail.

10) Considering the above circumstances, serious objections on prosecution side, stage of the case, weight of contraband and in the interest of justice, this court is not inclined to grant bail to the petitioner at this stage.

In the result, this petition is dismissed.

(Sd.) V.Padmanabhan,
Additional District Judge / Presiding Officer,
Prl. Spl Court for EC & NDPS Act Cases,
Madurai.