BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 20/01/2021

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.15205 of 2020

M.Ananthan ... Petitioner/Accused No.2

- Vs-

State, Rep.by The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,Madurai.
(NCB.F.No.48/1/01/2018/NCB/MDU) ... Respondent/Complainant

For Petitioner : Mr.R.Souri Raman, Advocate
For Respondent : Mr.Arul Vadivel @ Sekar,Special Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- To enlarge the petitioner on bail in NCB.F.No.48/1/01/2018/NCB/MDU on the file of the respondent police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent.

2.The petitioner is in judicial custody since 10.01.2018. He was arrested in connection with the case in NCB.F.No.48/1/01/2018/NCB/MDU for the offences under Sections 8(c) r/w 20(b)(ii)(c), 25, 27(A), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner seeks bail.

3.The learned counsel appearing for the petitioner strongly contended that the petitioner has to be let out on bail in view of non compliance of Section 50 of NDPS Act. He also stated that the petitioner is not having any bad antecedents. He therefore submits that the twin tests set out in Section 37 of the NDPS Act stand fulfilled in this case.

4.Since commercial quantity of Ganja is involved, in order to be entitled to bail, the accused will have to necessarily satisfy the twin tests laid down in Section 37 of the NDPS Act. There is no merit in the contention of the petitioner's counsel predicated on Section 50 of the Act. As rightly pointed out by the learned Special Public Prosecutor, the said provision will have no application to the case on hand since the recovery of the contraband

was not from the person of the accused but from the vehicle which he was driving. A mere look at the statement given by the petitioner under Section 67 of the NDPS Act would prima facie reveal his involvement. The respondent had received secret information that Ganja was being transported in the lorry bearing Registration No.TN 28 AB 5177. Based on such a specific intelligence input, the respondent had intercepted the vehicle near Valavanthankottai Toll Plaza, Thuvakudi, Trichy and seized the contraband under mahazar on 09.01.2018. It was the petitioner who was driving the vehicle. The vehicle also belongs to the petitioner's wife Kavitha. In the face of such material, I am not in a position to render a finding that the petitioner is not likely to have committed the offences in question.

5.Since the petitioner is not having any bad antecedents, it is possible to hold that he may not repeat the offence while being out on bail. But that alone would not be sufficient. Law mandates that both the parameters laid down in Section 37 of the Act are fulfilled before bail is granted. Since I am unable to record a finding in favour of the petitioner that he is not likely to have committed the offence, I have to necessarily dismiss this bail petition.

6.But the matter cannot rest there. It is evident that the petitioner's fundamental right to speedy trial has been violated. The case was registered on 09.01.2018. The petitioner was arrested on 10.01.2018 and remanded to judicial custody. Final report was filed on 02.07.2018. Cognizance of the offences was taken on 09.08.2018. The case involves three accused. All of them are in custody. All of them were present before the trial court and copies had already been furnished. Charges were framed on 19.12.2018. The trial was to commence on 04.01.2019. But for the last two years, the trial did not even take off. It is evident from the following diary entries :

09-08-2018	A1 to A3 are present. Copies furnished. For 226 Cr.P.C proceedings. Call on 23.8.18
23-08-2018	A1 to A3 not produced. A1 to A3 not seen through Video Conferencing as Net work failure. call on 6.9.18
06.09.2018	A1 to A3 are not produced and seen through V.C. as net work failure. Call on 20.9.18. To be produced.
20.09.2018	A1 to A3 are not produced and could not be seen through V.C. as Net Work failure. Call on 4.10.18. A1 to A3 to be produced.
04.10.2018	A2,A3 are produced. A1 is not produced. letter received from Jail Superintendent. Call on 17:10.18. A1,A3 RE till then.
17.10.2018	A1 to A3 are produced. For 226 of Cr.P.C., proceedings, at request. Call on 14.11.18. A1 to A3 RE till then
14.11.2018	A1 to A3 are produced. Advocate appeared and filed vakalath, MOA for A3 . For226 Cr.P.C. proceedings. call on 28.11.18. A1 to A3 RE

	till then.
28.11.2018	A1 to A3 are produced. Mr. V.S. Badrinath, advocate files MOA for A1,A2 . For 226 Cr.P.c. proceedings. call on 12.12.18. A1 to A3 RE till then
12.12.2018	A1-A3 are produced . Heard Both For further proceedings Call on 19.12.2018.A1-A3 R.E.Till then
19.12.2018	A1 to A3 are produced. charges are framed u/s. 8(c) r/w 20(b)(ii)(c), 29(1) of NDPS Act against A1 to A3, U/s. 8(c) r/w.27A against A1, U/s. 8(c) r/w. 20(b)(ii)(C) against A1 to A3, U/s. 8(c) r/w. 20(b)(ii)(c), 25 of NDPS Act against A2 charges are read over and explained to the accused and questioned. Pleads not guilty. Issue service summons to LW 1. call on 4.1.19. A1 to A3 RE till then
04.01.2019	Accused are produced. RET 30.1.19. Fresh summons to LW 1. call on 30.1.19
30.01.2019	A1 to A3 are produced. Issue service summons to LW 1. call on 13.2.19. A1 to A3 RE till.
13.02.2019	A1 to A3 are produced. No witness present. Issue service summons to LW 1. call on 6.3.19. RET .
06.03.2019	A1 to A3 are produced. No witness present. Issue service summons to LW 1. call on 27.3.19. RET
27.03.2019	A1 to A3 are produced. No witness present. Issue service summons to LW 1. call on 24.4.19. A1 to A3 RET tehn.
24.04.2019	A1 to A3 are produced. Cr.MP145/19 is pending. No witness present. Issue service summons to LW 1. call on 22.5.19. RET then.
22.05.2019	A1-A3 are not produced and not seen through V.C.s as NET work failure Cr.M.P.145/19 is pending . Call on 21.06.2019. RET then.
21.06.2019	CrMP 145-2019 is pending Call on 5.7.2019.
05.07.2019	A1 to A3 produced.Cr.M.P. pending. call on 15.7.19. RET then.
15.07.2019	Accused not produced. Cr.M.P.145-2019 is pending. To be produced on 29.07.2019.
29.07.2019	A1 to A3 produced from custody. Cr.MP pending. call on 13.8.19.
13.08.2019	A1 to A3 produced. Issue service summons to LW 1. call on 26.8.19. R.E. till then.
26.08.2019	A1 to A3 produced. Cr.MP No. 245/19 is pending. call on 9.9.19. For examination of LW 1 by then.
09.09.2019	A1 to A3 produced. Cr.MP No. 145/2019 is pending. call on

	23.9.19. R.E. till them for A1 to A3.
23.09.2019	A1 to A3 produced. Witness absent. Issue service summons to LW1. call on 9.10.19. RE till then for A1 to A3. Cr.MP No. 145/19 is also pending.
09.10.2019	A1 to A3 not produced through video conference. Net work failure. CC/200034/2018 09-10-2019 Hence, call on 23.10.19. Cr.MP 145/2019 is pending. call on 23.10.19.
23.10.2019	A1 to A3 produced. Witness absent. Issue service summons to LW 1. call on 6.11.19.. RE till then for A1 to A3.
06.11.2019	A1 to A3 produceed. crmp 145/19is pending. witness absent. Issue service summons for LW1 call on 2.12.19 R.E. till then for A1 to A3
02.12.2019	A1 to A3 produced. Crmp.145-2019 is pending. Witness absent. Issue service summons to Lw1. Call on16.12.19. Remand extended till then.
16.12.2019	A1 to A3 not produced. Letter received from Central prison,Trichy. Witness absent. Issue s/s to Lw 1 call on 27-01-2020 A1 to A3 to be produced by them.
27.01.2020	A1 to A3 produced. witness absent. Issue service summons to LW1 call on 10.02.2020. Remand Extended till then.
10.02.2020	A1 to A3 produced. Issue service summons to LW1 call on 24.02.2020. Cr.M.P.145-2019 is also pending. Remand Extended till then for A1 to A3.
24.02.2020	A1 to A3 produced. Issue service summon to LW1 and LW 2. call on 19.3.2020. Remand Extended till then for A1 to A3.
19.03.2020	A.1 to A.3 produced. Issue Service summon to L.W.1 and 2. Call on 23.04.2020. Remand Extended till then.
23.04.2020	For examination of LW1 and 2 COVID-19 National wide lock down Call on11.05.2020.
11.05.2020	For examination of LW1 and 2 COVID-19 National wide lock down Call on 01.06.2020.
01.06.2020	Cr.M.P.145-2019 is pending For examination of LW1 and 2 COVID -19 National wide lockdownCall on 1.7.2020.
01.07.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2. COVID-19 National wide Lock Down . Call on 03.08.2020.
03.08.2020	Cr.M.P.145-2019 is pending For examination of LW1 and 2 Nation wide lock down Judge on C.L. Reposted to 04.09.2020.

04.09.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2. Due to National wide Lock Down for Covid- 19. Call on 03.08.2020.
03.08.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2. Nation wide lockdown Judge on C.L. Reposted to 4.9.2020.
04.09.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2.Due to COVID-19 . Call on 7.10.2020
07.10.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2. Due to COVID-19 Nation wide lockdown Call on 11.11.2020.
11.11.2020	Cr.M.P. 145-2019 is pending For examination of LW 1 and 2. Call on 17.12.2020.
08.12.2020	Taken up today. A1 to A3 produced today through V.CS. R.E. till 17.12.2020.
17.12.2020	A1 to A3 Produced. Police and witness absent. Defence counsel absent. Issue ser vice summons to LW1 and LW2 call on 29.12.2020. R.E. till then.
29.12.2020	A1 to A3 produced through VCS. complainant and witness absent. For examination of LW1 and LW2 call on 09.02.2021. R.E. till then for A1 to A3.

7.The accused had not filed any discharge petition. They are in no way responsible for the non commencement of the trial. This Court had not stayed the proceedings. No quash petition was filed. There is no justification whatsoever for not commencing the trial in time. Full three years have elapsed since the date of petitioner's arrest. When A3 Rajendran applied for bail in Crl OP(MD)No.14856 of 2019, while dismissing the same vide order dated 19.11.2019, a direction was given to expedite the trial and conclude the same on merits and in accordance with law within a period of six months. That period also expired sometime in the middle of 2020.

8.The Hon'ble Supreme Court in the decision reported in ***(2008) 16 SCC 117 (Pankaj Kumar vs. State of Maharastra and others)*** held that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of

cases. In the very same judgment, it was held that in every case, where the the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial.

9.The case on hand is one under NDPS Act. It involves commercial quantity of Ganja. Therefore, it cannot be quashed. Bail also cannot be granted because Section 37 of the Act is not fulfilled. At the same time, having noted that the petitioner's right to speedy trial has been infringed, I cannot wring my hands in despair. The prosecution has to be called to account. It must pay for its lapse. I therefore direct the Narcotics Control Bureau/Prosecution to pay a sum of Rs.1.00 lakh as compensation within a period of four weeks from the date of receipt of copy of this order. The said amount will be paid to the wife of the petitioner herein. I also direct the trial court to conclude the trial within a period of three months from the date of receipt of copy of this order. If there is any difficulty in producing the witnesses physically, they may be produced through video conferencing.

10. With this direction, this criminal original petition stands disposed of.

sd/-
20/01/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SPECIAL JUDGE FOR EC AND NDPS ACT CASES,
   PUDUKKOTTAI.

2. THE SUPERINTENDENT,CENTRAL PRISON, TRICHY.

3. THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU, MADURAI SUB ZONE,MADURAI.

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

5. THE SPECIAL SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to Mr.C.ARUL VADIVEL@SEKAR, Advocate (SR-357[I] dated 21/01/2021)

ORDER
IN
CRL OP(MD) No.15205 of 2020
Date :20/01/2021

SKM
MS/PN/SAR-1/15.02.2021/7P.7C