

Vasanth vs The State Rep. By on 30 November, 2023

Author: C.V.Karthikeyan

Bench: C.V.Karthikeyan

CrI.O.P.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.11.2023

Pronounced on : 30.11.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.22643 of 2023

Vasanth
Petitioner/A1

Vs.

The State Rep. by
Inspector of Police,
PEW – Gummidipoondi,
Thiruvallur.
Respondent/Complainant

...

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
prayed to enlarge the petitioner on bail in Crime No.300 of 2023 pendi
investigation before the respondent police.

For Petitioner : Mr. R.C.Paul Kanagaraj

For Respondent : Mr. R. Kishore Kumar,

<https://www.mhc.tn.gov.in/judis>
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CrI.O.P.No.22643 of 2023

Govt. Advocate (Crl. Side)

<https://www.mhc.tn.gov.in/judis>
2/19

Crl.

ORDER

The petitioner/A1 who was arrested and remanded to judicial custody on 17.07.2023 for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25, 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.300 of 2023 on the file of the respondent police, seeks bail.

2.It is the case of the prosecution that the respondent had received information on 17.07.2023 that three persons were travelling with Ganja from Andhra Pradesh to Coimbatore via Chennai between 4.00 a.m., and 5.00 a.m., in a White colour Volks Wagen car bearing Registration No.TN-54-E-1235. After following due procedure, the respondent went to Elavur check post and intercepted the said car. All the three accused persons were arrested. From the petitioner herein / A1, the respondent seized 10 Kgs of Ganja and one Apple iPhone. From the 2nd accused, the respondent seized 5.500 Kgs of Ganja. From the 3rd accused, the respondent seized 5.500 Kgs of Ganja. The respondent also seized the car and two other mobile phones. <https://www.mhc.tn.gov.in/judis>

3.In the petition seeking bail, it had been stated that even if the case of the prosecution is true, it cannot be said that the offence under Section 20(b)(ii)(c) of NDPS Act, had been made out, since the mahazar states that only 10 kgs of Ganja had been seized from the petitioner herein, which would fall as an intermediate quantity and would not come under commercial quantity and therefore, Section 37 of NDPS Act would not be attracted.

4.The learned counsel for the petitioner argued that the quantity of Ganja seized from the petitioner was 10 Kgs, which is intermediate quantity and therefore stated that Section 37 of NDPS Act would not be applicable. The learned counsel stated that the respondent had prepared three separate mahazars with respect to the seizure of Ganja from the three accused. From the petitioner herein / A1 10 Kgs of Ganja had been seized. From the 2nd accused 5.500 Kgs of Ganja had been seized. From the 3rd accused 5.500 Kgs of Ganja had been seized. The learned counsel therefore stated that the petitioner should be granted bail, particularly because there are no previous cases as against the petitioner herein.

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

5.The learned counsel also stated that in similar circumstances, learned Single Judges of this Court had granted bail when separate mahazars had been prepared and when in each mahazar, the

quantity seized was less than the commercial quantity. In this connection, the learned counsel for the petitioner drew reference to the following orders granting bail in very similar circumstances by the learned Single Judges of this Court,

(i).Crl.O.P.No.18289 of 2009, Vetri @ Vetriselvan Vs. The Inspector of Police, K6 T.P.Chatram Police Station, Chennai – order dated 15.10.2009;

(ii).Crl.O.P.No.10832 of 2010, C.Krishnaveni Vs. State Rep.by Inspector of Police, NIB CID, Chennai – order dated 20.05.2010;

(iii).Crl.O.P.No.9448 of 2022, Mohammed Jalil Khan and another Vs. The Inspector of Police, NIB CID, Chennai – order dated 28.04.2022;

(iv).Crl.O.P.(MD) No.11888 of 2022, R. Vasantha Vs. State Rep. by Inspector of Police, Nagamalai Pudukottai P.S. Madurai District – order dated 16.08.2022;

(v).Crl.O.P.No.7864 of 2023, S.Suresh Vs. The State Rep. by the Inspector of Police, NIB CID, Kancheepuram – order dated 25.04.2023; and <https://www.mhc.tn.gov.in/judis>

(vi).Crl.O.P.Nos.19997 & 18008 of 2023, Muruganandam Vs. The State Rep. by the Inspector of Police, D-3, Tiruvallur – order dated 27.09.2023.

6. The learned Government Advocate (Criminal Side) for the respondent, however, seriously objected to the grant of bail. A counter had also been filed raising strong objections. It had been stated that the total quantity of contraband seized was 21 Kgs, which was commercial quantity. It had also been stated that though three separate mahazars had been prepared, they had been prepared at the same time from the three accused, who were in possession of the contraband together at the same place and they have also been searched at the same time and they had also been arrested at the same time. It had therefore been stated that the Court should consider the seizure as one whole seizure of 21 Kgs of Ganja, which is commercial in nature and not separately as pointed out by the learned counsel for the petitioner, 10 Kgs, 5.500 Kgs and 5.500 Kgs on the three accused persons. The learned Government Advocate (Criminal Side) for the respondent, therefore, stated that the total contraband seized are commercial in nature, and that this petition for bail must be rejected.

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7. I have carefully considered the arguments advanced and perused the materials on record.

8. This is a case where, on information, the respondent had proceeded to Elavur check post and had intercepted a White colour Volks Wagen car bearing Registration No.TN-54-E-1235 on 17.07.2023. All the three accused were in the car. Each one of them had in their possession three separate bags containing Ganja. The 1st accused in his bag had 10 Kgs of Ganja, the 2nd accused in his bag had 5.500 Kgs of Ganja and the 3rd accused in his bag had 5.500 Kgs of Ganja.

9. The only issue to be now examined is whether, having prepared three separate mahazars with respect to the three separate bags, the contraband should be considered as one whole unit of 21 Kgs or three separate units as stated in the mahazars. It must also be examined, whether the petitioner herein and other accused were in independent possession of the individual quantities, which they actually possessed or whether they were in conscious possession of the total contraband of 21 Kgs. <https://www.mhc.tn.gov.in/judis>

10. If it is to be considered as conscious possession of the total contraband seized, then the quantity becomes commercial in nature and Section 37 of NDPS Act, will be applicable.

11. The learned counsel for the petitioner argued that it should be considered as separate quantities and therefore urged that the petitioner should be granted bail, since he was in possession of only 10 Kgs of Ganja.

12. On the other hand, the learned Government Advocate (Criminal Side) for the respondent, argued that all the three accused were in conscious possession of the total contraband of 21 Kgs and therefore, it should be considered as commercial quantity and that bail should be rejected.

13. In view of the stipulations under Section 37 of the NDPS Act, before granting bail for an offence under NDPS Act twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is quoted herein below:

"37. Offences to be cognizable and non-bailable. -

<https://www.mhc.tn.gov.in/judis> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the <https://www.mhc.tn.gov.in/judis> limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

14. The Hon'ble Supreme Court had examined the expression 'reasonable grounds' as found in Section 37(1)(b)(ii) of NDPS, Act.

15. In Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (CrI) 831, the Hon'ble Supreme Court has settled the expression "reasonable grounds". The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz;

(i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

16. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329, held that word 'possession' includes conscious possession. Relevant paragraph nos. 9 to 13 are extracted below:

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC <https://www.mhc.tn.gov.in/judis>

52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD).

13. Once possession is established the person who claims <https://www.mhc.tn.gov.in/judis> that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483)."

17. The Hon'ble Supreme Court in the case of Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661, has again considered the concept of "conscious possession". In the said case, two accused persons were travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Hon'ble Supreme Court in the said case, taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act had held that the accused was not only in possession, but conscious possession of the recovered contraband also.

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18. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.

19. In the instant case, all the three accused were in conscious possession of the fact that, each one of them were in possession of Ganja and they had the common intention to take that total contraband from Andra Pradesh to Coimbatore. They were travelling in the car for that purpose. They knew specifically about the quantities of Ganja, which each one of them carried and possessed. They had deliberately divided the quantity among themselves to project innocence and that each one of them was not individually carrying Ganja of commercial quantity. If the proposition advanced by the learned counsel for the petitioner is to be accepted, it would lead to a mockery of the law. It would only require sufficient number of persons and each person can carry less than the commercial quantity and all then can travel together and each claim innocence of the other's possession and claim that they were each in possession of quantity of Ganja, which is less than the commercial quantity. The final object is however transporting the total contraband together to the stated destination. The arguments of the <https://www.mhc.tn.gov.in/judis> learned counsel for the petitioner are therefore rejected by me.

20. In the instant case, I hold that each one of the three accused were in conscious possession of the other person's possession of Ganja. The total contraband is to be taken into consideration. The entire contraband was seized at the same time. The three accused were arrested at the same time. They were arrested at the same place from inside the same car. The orders of the learned Single Judges of this Court cited, unfortunately have not examined the aforementioned principle of conscious possession.

21. In view of these reasons, I am not inclined to grant bail to the petitioner herein. Accordingly, this Criminal Original Petition stands dismissed.

30.11.2023 smv Index: Yes / No Neutral Citation: Yes / No Speaking order : Yes / No
<https://www.mhc.tn.gov.in/judis> To

1. The I Additional Special Court for NDPS Act, Cases, Chennai.

2. The Inspector of Police, PEW – Gummidipoondi, Thiruvallur.

3. The Public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> C.V.KARTHIKEYAN, J.

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