

Saravanan Vs. the State Rep. by

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Court : Chennai

Decided On : Nov-05-2013

Judge : M.Venugopal

Appellant : Saravanan

Respondent : The State Rep. by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

05. 11.2013 CORAM: THE HONOURABLE MR.JUSTICE M.VENUGOPAL
Crl.R.C.(MD).No.719 of 2013 Saravanan .. Petitioner Vs The State rep. by The
Sub-Inspector of Police, Cumbum North Police Station, Theni District. (Crime
No.221 of 2013) .. Respondent Prayer Criminal Revision Case is filed under
Section 397 and 401 of Criminal Procedure Code, against the order dated
04.10.2013 passed in Crl.M.P.No.2581 of 2013 by the Learned Additional District
Judge for Principal Special Court for NDPS Act Cases, Madurai. ! For Petitioner ..
Mr.S.Muniyandi ^For Respondent .. Mr.P.Kandasamy Government Advocate
(Crl.side) ***** :

ORDER

***** The petitioner/A1 has focused the instant Criminal Revision before this
Court, as against the order, dated 04.10.2013, passed in Crl.M.P.No.2581 of 2013,
by the Learned Additional District Judge for Principal Special Court for NDPS Act

Cases, Madurai.

2. The Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, while passing the impugned order, dated 04.10.2013, in Crl.M.P.No.2581 of 2013, has inter alia observed that the petitioner is in custody from 12.07.2013. Contraband recovered from the petitioner is 20kgs and the contraband involved in this case is 30kgs of Ganja i.e. commercial quantity. For commercial quantity, the mandatory provision for bail is 180 days, but in this case, the petitioner is in custody for 85 days. Under such circumstances, the petitioner is not entitled for an order of bail under Section 167(ii) Cr.P.C. and resultantly, dismissed the petition.

3. Assailing the correctness of the order of dismissal, dated 04.10.2013, passed in Crl.M.P.No.2581 of 2013, by the Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, the Learned counsel for the petitioner/A1, submits that the impugned order dated 04.10.2013, passed in Crl.M.P.No.2581 of 2013, by the trial Court is against law and as such, it is liable to be set aside.

4. The Learned counsel for the petitioner/A1 urges before this Court that the Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, has not appreciated the ingredients of Section 2(vii)(a) of the NDPS Act, 1985, which speaks of ".commercial quantity"., which runs as under:- ".Commercial quantity"., in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette".

5. The Learned counsel for the petitioner/A1 projects an arguments that the notification S.O.1055(E), dated 19.10.2001, Table (see sub-clause (viiia) and (xxiiiia) of Section 2 of the Act) in serial No.55, Ganja is mentioned as 20kgs as commercial quantity and further, the small quantity (in gm) is mentioned as 1000. But in the present case, the respondent/police recovered only 20kgs from the petitioner/A1, which is an intermediate quantity and this vital aspect of the matter has not been taken into consideration by the trial Court, at the time of passing of the order in Crl.M.P.No.2581 of 2013, dated 04.10.2013.

6. Expatiating his contention, the Learned counsel for the petitioner/A1 strenuously contends that the statutory period is 60 days under Cr.P.C. for filing charge sheet before the Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, and in view of the fact that the respondent has not filed the charge sheet before the trial Court within 60 days, as adumbrated under Cr.P.C., the petitioner/A1 is entitled to obtain a statutory bail under Section 167(ii) Cr.P.C.

7. Lastly, it is the submission of the Learned counsel for the petitioner/A1 that A2(co-accused) was released on anticipatory bail by this Court in Crl.O.P.(MD)No.16574 of 2013, dated 26.09.2013.

8. Per contra, the Learned Government Advocate (Crl. side), for the respondent/Police submits that the commercial quantity of Ganja viz., 20 kgs. is specified in Serial No.55 of the notification and in view of the fact that the petitioner/A1 was found to be in possession of 20 kgs of contraband viz., Ganja, which is admittedly a commercial quantity, he is not entitled to claim the benefit of statutory bail under Section 167(ii) Cr.P.C. Continuing further, the Learned Government Advocate (Crl.side) contends that in respect of commercial quantity under the NDPS Act, as per Section 36A(4) of the Act, the mandatory provision for bail is 180 days.

9. Further, it is the plea of the respondent that on 12.07.2013 at about 11.45 hours, the respondent/complainant while on raid at Cumbum to Kombai road near Paramathevar Wedding Hall at Theni District, the petitioner (Saravanan) and another one Periya Karuppan @ Out Periyakaruppan came in a TVS XL Heavy Duty vehicle TN60X5377 and after seeing the police raiding party, they tried to escape from the scene. However, they were enquired and the revision petitioner/A1 was found to be in possession of one bag containing 20Kgs of Ganja and A2 Periyakaruppan was in possession of another bag containing 10 Kgs of Ganja, without any permission from the Government. The two bags of Ganja and the vehicle were seized and in Crime No.221 of 2013, dated 12.07.2013, First Information Report was registered under Section 20(b)II(c) & 25 of the N.D.P.S. Act, 1985.

10. By way of reply, the Learned counsel for the petitioner/A1, seeks in aid of the order passed by this Court, dated 15.06.2000 in CrI.O.P.(MD)No.5274 of 2007, between RAMAN ALIAS JEYARAMAN v. THE STATE REP. BY THE INSPECTOR OF POLICE, PALANI TALUK POLICE STATION, DINDIGUL DISTRICT, wherein, in paragraph Nos.5 and 6 it is observed and laid down as follows:- ".5. The Learned counsel for the petitioner would cite an unreported decision of this Court, dated 26.02.2007 in CrI.O.P.(MD)No.1454 of 2007. This Court in that matter held that 20 kilograms of Ganja would not amount to commercial quantity and if there is anything more than 20 kilograms of Ganja it would amount to commercial quantity.

6. I respectfully agree with the view of the Learned Single Judge of this Court, in view of Section 2(vii)(a) of the N.D.P.S. Act, which is extracted herein for ready reference. ".Commercial quantity"., in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette". The term ".Greater than"., the quantity specified by the Central Government, would convey the meaning that over and above the quantity specified in the notification there should be some quantity and then only the entire quantity would be taken as commercial quantity. But in this case only 20 kilograms is involved, which has to be taken only as an intermediate quantity, so to say below the commercial quantity and above the lesser quantity. Accordingly, as per Section 167(2) of Cr.P.C. statutory bail is attracted in view of 60 days having elapsed ever since the date of initial remand and so far no charge sheet has been filed. Regarding the plea of the Learned Government Advocate (Criminal side) that there are already two cases pending as against him, I am of the view that, those are all not convictions but only cases pending under the N.D.P.S. Act. Hence, in those circumstances I would like to grant bail to the petitioner, subject to the following conditions: (i) The petitioner should execute a bond for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.I, Madurai; and (ii) The petitioner should report before the respondent-police daily at 10.00 a.m. until further orders."

11. The Learned counsel for the petitioner/A1 laid emphasis on the term 'Intermediate quantity' and reiterates that the recovery of contraband of 20 Kgs from the petitioner/A1 is not to be construed as 'commercial quantity'.

12. It is to be noted that Section 2(xxiii) N.D.P.S. Act, 1985 reads as follows:- ".small quantity"., in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette".

13. At this juncture, this Court, very pertinently points out that the definition Section 2 of NDPS Act does not refer to the term ".Intermediate quantity".. A mere running of the eye over the definition Section 2 of the NDPS Act, 1985, latently and patently discloses that only a reference is made to Section 2(vii)(a) in respect of 'commercial quantity' and Section 2(xxiii)(a) in respect of 'small quantity'. This Court aptly points out the decision of the Hon'ble Supreme Court in PRAMOD KUMAR JAISWAL & OTHERS v. BIBI HUSN BANO & OTHERS) reported in AIR 2005 SC2857 wherein it is observed the term 'Intermediate' means coming between two things in time, place, character etc.

14. That apart, in the notification as referred to supra, in serial No.55, Ganja is categorically mentioned 20Kgs as commercial quantity and the small quantity is mentioned as 1000 gm. The said notification S.O. 1055 (E) dated 19.10.2001, is quite explicit and admits of no exception in the considered opinion of this Court.

15. At this stage, it is to be pointed out that the revision petitioner/A1 was said to be in possession of 20Kgs of Ganja, without any valid licence or permission from the Government, as contended on behalf of the respondent/complainant.

16. It cannot be gainsaid that N.D.P.S. Act, 1985, is a stringent enactment and the provisions of this Act undoubtedly override the provisions of Criminal Procedure Code. In fact, the provision in Sub Section (4) of Section 36-A of N.D.P.S. Act, is an exception to the general rule contained in Section 167(2) of Criminal Procedure Code. As a matter of fact, the proviso to Sub Section 36-A of the N.D.P.S. Act, 1985, makes it pelucidly clear that if it was not possible to complete the investigation within a period of 180 days, the Special Court may extend the said

period up to one year on the report of the Public Prosecutor, indicating the progress of investigation and the specific reasons for the detention of the accused beyond 180 days. Indeed, the deeming provisions contemplated under Section 36-A(1) (c) is very much incorporated for a limited purpose. Strictly speaking, the stringent provisions of N.D.P.S. Act, 1985, are meant to control and regulate the operations pertaining to Narcotic Drugs and Psychotropic Substances, as opined by this Court.

17. Be that as it may, for the foregoing detailed qualitative and quantitative discussions and on a careful consideration of the respective contentions and also this Court taking note of the facts and circumstances encircling the present case, comes to a the resultant conclusion that the impugned order passed by the Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, dated 04.10.2013, does not suffer from any impropriety or irregularity or patent illegality in the eye of law. Consequently, the Criminal Revision fails.

18. In the result, the Criminal Revision is dismissed. Consequently, the order passed by the Learned Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai, dated 04.10.2013, in CrI.M.P.No.2581 of 2013, is confirmed by this Court for the reasons assigned in this order. rj2 To 1.The Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai. 2.The Sub-Inspector of Police, Cumbum North Police Station, Theni District.

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