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SLP(Crl.)No. 5534 OF 2003
ITEM No.1

Court No. 9

SECTION IIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 5534/2003
(From the judgement and order dated 04/12/2003 in CRLOP 34232/03
of The HIGH COURT OF MADRAS)
SARIJA BANU (A) JANARTHANI @ JANANI &ANR Petitioner (s)

VERSUS

STATE THROUGH INSPECTOR OF POLICE Respondent (s)
(With Appln(s). for directions,bail,exemption from filing O.T.)
(With Office Report)
With
(T.P.(Crl.) No.316/2003) (With appln. for stay)

Date : 26/02/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)Mr. Kapil Sibal,Sr.Adv.
Mr. K.Subramanian,Sr.Adv.
M/s. E.C. Agrawala,M.Agarwal,Rishi Agrawal
and J.Seelan,Advs.
For Respondent (s)Mr. Altaf Ahmed,ASG
Mr. L.N.Rao,ASG.
Mr. Subramonium Prasad.,Adv.
Mr. R.Srivastava,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard Mr. Kapil Sibal, the learned senior counsel
from 10.35 a.m. to 12.00 clock and thereafter Mr.K.Subramanian,
the learned senior counsel for 10 minutes & thereafter, Mr.Altaf
Ahmed,ASG till 3.00 P.M.
Exemption from filing O.T. allowed.
Leave granted.
The appellants be released on bail in terms of the
signed order.
The appeal is disposed of.
T.P.(CRL) No.316/2003 : Dismissed as withdrawn.

(Y.P. Dhamija) (Veera Verma)
AR-cum-PS Court Master
Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2004
(arising out of SLP(CRL) No. 5534/2003)

Sarija Banu (A) Janarthani @ Janani & Anr

...

APPELLANT (S)

VERSUS

State through Inspector of Police

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RESPONDENT (S)

O R D E R

Leave granted.

Heard both sides.

This is an appeal directed against an order denying bail to the appellants. The appellants are accused in a Criminal Case registered under section 20(b)(ii)(c) and under section 25 of the NDPS Act. The prosecution case is that police got an information on 10.7.2003 at 10.p.m. that some drugs may be transported in a Hundai Accent GLS car. On the basis of that information police intercepted a car coming through Madurai Ring Road, Madurai, Chennai at 11.00 p.m. The car was driven by A-3 and the first appellant was found travelling in the car and a search was made and ganja weighing 5 kg. and a sum of Rs.10 lakhs cash were recovered from the car. The first appellant was arrested at 11.15 p.m. on 10.7.2003 and on the basis of a confessional statement made by her search was conducted in building No.4/1078-A of Bharat Street, Anbu Nagar, Madurai at about 1.15 a.m. on 11.7.2003. The second appellant was found staying in that house and she was also taken into custody at 1.15 a.m. Both appellants were taken to the house at Chennai bearing No. 486-C and found in that house it is alleged that ganja weighing 10 kg. and a cash of Rs. 1,00,18,000/- were recovered. These appellants did not possess any licence to keep Narcotic drugs. The case was registered against them under the NDPS Act.

The appellants preferred bail application before the Sessions Court. The same was rejected and aggrieved by the same, they preferred bail application under section 439, CR.P.C. before the High Court and the same was dismissed by the impugned order.

We heard Mr. Kapil Sibal, the learned senior counsel for the first appellant and Mr. K. Subramanian, the learned senior counsel for the second appellant and also Additional Solicitor General for the State. It was submitted that the learned counsel for the first appellant that the case against these appellants were falsely foisted on them and in order to support this contention, counsel drew our attention on 10.7.2003 at 1.53 p.m. a telegram was sent by one Kandasamy to the Home Secretary, Govt. of Tamil Nadu, copy to Governor, Govt of Tamil Nadu and another to the Commissioner, Commissioner of Police, Chennai and the Inspector of Police, Police Station, Chennai and another telegram to Superintendent of Police, Madurai and copy to Inspector Police, Anbu Nagar, Madurai. In the telegram, it is stated that a police party illegally entered into the house occupied by these appellants and taken them into custody and whereabouts are not known and it was afraid that there may be danger to their lives and the immediate action may be taken to safeguard their lives. This telegram is said to have been sent from Chennai. When the bail application was considered by a learned Single Judge of the High Court, pursuant to request made by the Court, Kandasamy, who is alleged to have sent telegram from Chennai filed an affidavit along with affidavits of two lawyers. In the affidavit it was alleged that they got information about the illegal detention of the appellants and they came to Chennai and as per the instruction given by the Advocates, the telegram was sent in the name of Kandasamy.

The fact that such a telegram was sent and received is not disputed. However, it is stated by the respondent that they could not find whereabouts of Kandasamy. It is also pertinent to note that even though such a serious information was received by the police as per the complaint, no case was registered and no investigation started. From this facts, it appears that something happened on 9.7.2003 and these are relevant factors for granting bail. We are conscious of the stringent provisions contained in section 37 of the NDPS Act and we are also conscious of the fact that a charge has now been framed against the appellants and they have to face the trial.

It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance of section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application. In the aforesaid circumstances having regard to the special facts of the case, we direct that the appellants 1 and 2 be released on bail on executing a bail bond for Rs.50,000/- each with two solvent sureties for the like amount to the satisfaction of the Special Judge, EC/NDPS, Madurai on the following conditions:

- (1) The counsel for the appellants requested that the appellants may be allowed to stay outside the State of Tamil Nadu. We are not inclined to grant such a prayer as the respondents police authorities would not be able to ensure the timely presence of the appellants in Court;
- (2) The appellants shall not leave jurisdiction of the District Court, Madurai and shall report before the Circle Inspector, Karuppayurani Police Station once in two weeks for 3 months, thereafter, once in a month.
- (3) The appellants shall surrender their pass-port before the Court, if not already seized by the police.

The Special Judge is directed to expedite the trial. Whatever the statement made regarding the merits of the case shall not have any persuasive effect on the Special

Judge while finally deciding the case.

The appeal is disposed of.

T.P.(CRL) No. 316/2003 : The Transfer Petition is dismissed as withdrawn.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
February 26, 2004.