

Crl.O.P.No.17357 of 2015**R.SUBBIAH, J.**

This is the second bail application filed by the petitioner herein/2nd accused.

2.The petitioner, who was arrested on 23.04.2015 on execution of non-bailable warrant, in C.C.No.27 of 2009 (Crime No.59 of 2005) for the alleged offence punishable under Section 8(c) read with 20(b)(ii)(B) of NDPS Act, on the file of the Special Court for Essential Commodities Act Cases at Salem, seeks the relief of bail.

3.The allegation against the petitioner is that he was found in possession of 7.000 kgs of dry Ganja.

4.The learned counsel appearing for the petitioner submitted that even according to the case of the prosecution, the petitioner was found in possession of 7.000 kgs of dry Ganja, which is not a commercial quantity. Pursuant to the non-bailable warrant issued on 26.05.2014, the petitioner was arrested on 23.04.2015 and he has been in prison for more than three months. Thus, the learned counsel for the petitioner sought for the relief of bail to the petitioner.

5. The learned Government Advocate (Crl.Side) opposed the

grant of bail to the petitioner stating that since the petitioner did not appear before the trial Court, Non-Bailable warrant was issued against him on 26.05.2014 and he was arrested only on 23.04.2015. Further, if the petitioner is released on bail, he will once again abscond.

6.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record and I find that this Court has dismissed the earlier bail petition filed by the petitioner since the petitioner was absconding for more than one year. Now, the trial is under progress. As contended by the learned Government Advocate (Crl.Side), if the petitioner is enlarged on bail, he will once again abscond and the trial proceedings will be affected.

7.Further, the second bail petition is maintainable only when there is any change of circumstances. At this juncture, it would be appropriate to refer the decision rendered by the Hon'ble Supreme Court in the case of KALYAN CHANDRA SARKAR, ETC. .vs. RAJESH RANJAN @ PAPPU YADAV AND ANOTHER (2005(1) CTC 783) and the relevant paragraphs are extracted hereunder:

"18. In that process a person whose application for enlargement on bail once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in

spite of his earlier applications being rejected, the Court can do so.

19. The principles of *res judicata* and such analogous principles although are not applicable in a criminal proceedings, still the Courts are bound by the doctrine of judicial discipline having regarding to the hierarchical system prevailing in our country. The findings of a higher Court or a coordinate Bench must receive serious consideration at the hands of the Court entertaining a bail application at a large stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive

bail applications even on a ground already rejected by Courts earlier including the Apex Court of the country".

The principles laid down in the said judgment are squarely applicable to the facts of the case on hand. Unless there is any material change in the factual situation or in law subsequent to the dismissal of the earlier bail application, the present application cannot be considered. In the instant case, I do not find any change of circumstances.

8. Having considered the facts and circumstances of the case, I am not inclined to grant bail to the petitioner and the petition is liable to be dismissed. Accordingly, the criminal original petition is dismissed.

31.07.2015

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Pre-delivery Order in
Crl.O.P.No.17357 of 2015

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