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Crl.M.P.No.3435 of 2022 in Crl.A.No.289 of 2022

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D.BHARATHA CHAKRAVARTHY. J.,

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence imposed on him, vide Judgment of the Learned Special Judge for EC/NDPS Act cases at Salem in C.C.No.34 of 2018, dated 09.04.2021 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2.Heard the learned Counsel for the petitioner and learned Government Advocate (Criminal Side) appearing for the respondent.

3.The learned Counsel appearing on behalf of the petitioner would submit that in this case, even though there is an allegation that 74 Kg of Ganja was seized, it was not produced before the Magistrate and it reached the Court only after ten days. Similarly, even though the alleged seizure of contraband is said to have been taken at a public place, where 50 vehicles were standing, not even a single independent witness was examined with respect to the alleged seizure. Therefore, the alleged seizure itself is doubtful and it is not proved before the Trial Court. This apart, he would



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also submit that the mandatory procedure as laid down under the Act, was not at all followed in this case, therefore, the petitioner has got more than prima facie case and he seeks bail for the petitioner.

4.A perusal of the grounds of appeal, raised by the petitioner and the Judgment of the Trial Court, it is clear that the grounds which are raised before this Court has already been considered by the Trial Court and it had answered in the impugned Judgment itself. Whether the said findings are erroneous, has been gone into only at the time of disposal of the appeal. Instead of giving findings on merits, in respect of those questions raised at this stage, suffice to say that the grounds raised and the matter submitted before this Court at this stage, cannot be construed as to make out a case, so as to satisfy Section 34 of the Act, at this stage. Therefore, I am of the view that the petitioner is not entitled for bail, at this stage, since the seized quantity is in commercial quantity, hence, the Suspension of sentence petition is dismissed.

12.08.2022
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