



Crl.O.P.No.24070 of 2022

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G.K.ILANTHIRAIYAN, J.

The petitioner, who was arrested and remanded to judicial custody on 22.09.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act, 1985, in C.C.No.84 of 2022 on the file of I Additional Special NDPS Court at Chennai, in respect of Crime No.28 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 22.09.2021, on secret information, the respondent and their team went to the place of occurrence at Magavaram rountanna, Andhra pradesh Bus stop and conducted a vehicle check up and found three accused persons were in possession of 60 kgs of Ganja in 3 bags (each 20 Kgs) in TATA Indica car, bearing Registration No. TN 10 AD 3843. Another three accused persons were also found in possession of 50 kgs of Ganja in 2 bags (each 25 kgs) in Honda Jazz car, bearing Registration No.TN 07 BL 3213. Therefore, six accused persons were found in total possession of 110 Kgs of Ganja illegally. Hence, the complaint.



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3. The learned counsel for the petitioner would submit that there are totally 6 accused, in which, the petitioner is arrayed as A5. As per the confession statement of first accused, the petitioner has been implicated as an accused. There were two cars taken by the first accused to purchase the contraband weighing 110 kgs to Andhra Pradesh, in which, one of the car was driven by the petitioner. He acted as a driver and he had absolutely no knowledge about the contraband which was loaded in the car. He also produced the statement recorded under Section 161(3) of Cr.P.C of the erstwhile owner of the vehicle. He deposed that the vehicle involved in this case was owned by him and it was leased out in the Department of Tamil Nadu Electricity Board and after sometime, he cannot drive the vehicle and as such he sold the vehicle in favour of the petitioner herein. Thereafter, the petitioner used to drive the car for his customers. Likewise, on the call made by the first accused, he drove the car. Even according to the case of the prosecution, there is absolutely no material to show that the car went to Andhra Pradesh for purchase of contraband and returned to Chennai. Only on the confession statement of the first accused, the entire case has been foisted as against the petitioner herein. He further submitted that other car driver viz., A3 was already arrested and released on bail by this Court.



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4. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2008 16 SCC 417** in the case of “**Noor Aga Vs. State of Punjab and Another**”, wherein it was held that the provisions under Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution.

5. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2011 AIR SCW 3106**, in the case of “**Ram Singh Vs. Central Bureau of Narcotics**”, wherein it was held that the appellant was working in a hotel for the past two months and brought the opium from the house of the hotel owner to the hotel, where it was being sold in tablets to the truck-drivers. In the confession, appellant has not stated or for that matter none of the witnesses have deposed that he was involved in selling the opium tablets.



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Likewise, in the case on hand, the petitioner was acted as a driver of the car on the call made by the first accused. Therefore, he has nothing to do with the alleged crime. Hence, he prays for grant of bail to the petitioner.

6. The learned Additional Public Prosecutor submitted that the petitioner along with other accused were found in possession of 110 Kgs of Ganja. This is the fourth bail petition filed by the petitioner. Earlier petitions filed by the petitioner was dismissed by this Court. Hence, he vehemently opposed grant of bail to the petitioner.

7. It is seen from the confession statement of the first accused, the petitioner along with other persons, went to Andhra Pradesh by two cars, to purchase the contraband. On secret information, the respondent Police and their team went to the place of occurrence and conducted a vehicle check up and found that the first car, bearing Registration No.TN 10 AD 3843, was in possession of 60 Kgs of Ganja. The second car, bearing Registration No.TN 07 BL 3213, was in possession of 50 Kgs of Ganja. Hence, all the accused persons were found in possession of 110 Kgs of Ganja.



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8. The learned counsel for the petitioner vehemently contended that the petitioner is only a driver on the call made by the first accused and he acted as a driver. Therefore, the petitioner was not in conscious possession of contraband as alleged by the prosecution. There is no material available to show that the petitioner was also involved in the purchase of contraband along with other accused persons.

9. Even according to the petitioner, he owned a car bearing Registration No.TN 10 AD 3843 and he purchased from one of the witnesses. Therefore, he is the owner of the car and he also know the first accused. Therefore, the petitioner also had knowledge about the travel to Andhra Pradesh. In Andhra Pradesh, all the accused persons have purchased the contraband and while returning to Chennai, they were intercepted by the respondent and they were found in possession of contraband weighing 110 Kgs of Ganja. Therefore, it cannot be said that the petitioner was not in conscious possession of contraband. Hence, the Judgements cited by the learned counsel for the petitioner are not applicable to the case on hand. Those grounds arrives only during the Trial before the Trial Court. Admittedly, the petitioner along with other accused were found in possession of 60 Kgs of Ganja in his Car.



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Therefore, it cannot be said that the petitioner has no knowledge about the contraband which was kept in the car and it is also a commercial quantity and as such there is a bar under Section 37 of NDPS Act. Therefore, the petitioner failed to fulfill the conditions as contemplated under Section 37 of NDPS Act.

10. Taking into consideration the bad antecedents of the petitioner, this Court had dismissed the earlier petitions filed by the petitioner and that there is no change of circumstances, this Court is not inclined to grant bail to the petitioner. However, the Trial Court is directed to complete the Trial, within a period of six months from the date of receipt of a copy of this order.

11. Accordingly, this Criminal Original Petition is dismissed.

12.10.2022

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