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CRL.O.P.No.25533 of 2022

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M.NIRMAL KUMAR., J.

The petitioner, who was arrested and remanded to Judicial Custody on 22.09.2018 in C.C.No.75 of 2019, for offence under Sections 8(c) r/w 20, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 and Section 135 of the Customs Act, seeks bail.

2.Learned counsel appearing for the petitioner submitted that the respondent arrested the petitioner/A2 along with A1 while they allegedly transporting 229.800 kgs of ganja from Andhra Pradesh to Tamil Nadu. The case projected is that on 21.09.2018, the petitioner along with A1 while travelling in a car from Andhra Pradesh to Tamil Nadu, they were carrying 229.800 kgs of Ganja in the trunk of the vehicle. The car was intercepted and the ganja was recovered from them and on the same day, the statement of the petitioner was recorded under Section 67 of the NDPS Act and on 22.09.2018, the petitioner was arrested and remanded



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to the judicial custody in this case. He further submitted that in this case, there are foundational and fundamental defects. Though the mahazar is said to have been drawn at Sulurpet, Andhra Pradesh, the contraband was seized at T.Nagar, Chennai. Hence, there is vital contradiction in drawing of mahazar and seizure of materials. The Hon'ble Apex Court held that the statement under Section 67 of the NDPS Act is inadmissible in evidence and it can be considered to be a statement of recovery under Section 27 of the Indian Evidence Act. In this case, even before the petitioner's statement, the contraband was recovered. Hence, there is no admissible statement against the petitioner and there is no material. He further submitted that as per Section 42 of the NDPS Act, the officials of the Revenue Intelligence can exercise their power within the jurisdiction of the State. In this case, the seizure and drawing of mahazar had been taken place in the State of Andhar Pradesh, hence, the respondent has proceeded with the case without jurisdiction, which is in clear violation of the standing orders issued by the Central Government. He further submitted that Section 37(1)(b)(ii) obliterates the presumption of innocence, a cardinal principle of liberty under Article 21 of the



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3.Learned counsel further submitted that the petitioner being a young man, was arrested on 22.09.2018, at the age of 27 years and he is the sole breadwinner of the family. Further, the petitioner is languishing in the jail for more than four years. During his retention, the petitioner has shown good conduct and demeanor. In this case, already trial commenced and prosecution witnesses are cross examined. Hence, he prayed for bail.

4.Mr.N.P.Kumar, learned Special Public Prosecutor for NDPS Cases appearing for the respondent submitted that based on the information, the respondent along with independent witnesses mounted surveillance at Sullurpetta Toll Plaza and intercepted white Skoda Octavia car bearing Registration No.TN 0I X 8570 along with the petitioner and A1, at about 15.30 Hrs, on 21.9.2018. On enquiry, both A1 and A2 admitted carrying 200 kgs of contraband ganja in their vehicle from Andhra Pradesh to Nagapattinam for onward smuggling to Sri Lanka



through coastal District of Nagapattinam. After completing the formalities of Section 50 of NDPS Act, 1985, the mahazar proceedings were started and recovered 229.800 kgs of ganja in 111 packets. Thereafter, the samples were taken and on personal search documents recovered. The mahazar proceedings completed by 21.00 Hrs on 21.9.2018. The accused and the independent witnesses along with the officers affixed their signatures on the seized property and documents. Summons issued to the petitioner/A2 and A1, they gave voluntary statement admitting their role in the offence narrating the entire proceedings and their contact with other persons. In his voluntary statement given under Section 67 of the NDPS Act, 1985, A1 *inter alia* admitted that he received the said ganja from one Shri Ram of Tuni in Andhra Pradesh and was transporting the contraband to Nagapattinam for delivery to one Jayachandran for a monetary consideration of one lakh. A1 further stated that Jayachandran would smuggle out the said ganja to Sri Lanka through coastal route of Nagapattinam, A1 also admitted to have indulged in similar offence on seven previous occasions. A2 in his statement, dated 21.9.2018 *inter alia* corroborated the



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statement of A1 and stated that he accompanied A1 as a driver for a monetary consideration of Rs.10,000/- and that he had committed similar offence on four previous occasions. Apart from cash, duplicate number plates were also recovered from the said vehicle.

5.He further submitted that on the basis of the seized property and statements of witnesses, the petitioner/A2 and another were placed under arrest. Chemical analysis report was obtained from the competent authority and the report confirmed that the seized contraband answered positive for Cannabis (Ganja) and is covered under NDPS Act, 1985. The seized contraband is in commercial quantity and attracts Section 37 of the NDPS Act, 1985. As per Section 37 of NDPS Act, 1985, the petitioner has to prove that he is not involved in the offence and while on bail, he would not commit the offence. In the petition filed by the petitioner/A2 no averments have been made to satisfy the conditions laid down in a Section 37 of the Act.



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6.He further submitted that so far six witnesses examined on the side of the prosecution and only two more witnesses are left to be examined. Out of six witnesses, the petitioner cross examined only two witnesses and the cross examination of PW3 is in progress. During trial, the petitioner failed to cross examine the witnesses then and there and later, by filing recall petition, the witnesses are being cross examined now. The petitioner being the reason for the delay in progress of the trial, cannot now make a claim that for the past four years he is in jail. Further, the two other witnesses would be examined shortly and the case can be completed within stipulated period. He further submitted that the petitioner's contention about the admissibility of Section 67 of the Act and as regard to the jurisdiction of the DRI officials, the same is a matter of fact, which has to be decided only during trial. In this case, the petitioner not satisfied Section 37 of the Act and no positive materials shown in this regard. This is the third bail application of the petitioner and there is no progress or change of circumstances between the dismissal of earlier bail petitions and this petition. Hence the petitioners/A2 herein is not entitled



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to bail and the petition is liable to be dismissed.

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7.On considering the submissions and on perusal of the materials, it is seen that in this case, totally 229.800 kgs of ganja seized from the accused while they travelling from Andhra Pradesh to Tamil Nadu intended to be smuggled to Sri Lanka, which is a commercial quantity. Already, in this case, the charge sheet has been filed and trial is in progress. So far, six witnesses examined on the side of the prosecution and only two more witnesses are to be examined. The petitioner failed to cross examine the witnesses then and there and added to the cause for progress of the trial. Hence, the petitioner cannot now make a claim that they are being in jail for long period.

8.In view of the above, without advertng to the merits and demerits of the case, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.



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9.The petitioner to put forth all the points raised herein before the trial Court during trial in C.C.No.75 of 2019.

08.11.2022

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