



Crl.O.P.No.2272 of 2023

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WEB C N.ANAND VENKATESH., J.

When the earlier bail application was filed by the petitioner in Crl.O.P.No.11360 of 2019, this Court considered the entire case on merits and came to a conclusion that the matter involves commercial quantity and the twin conditions imposed under Section 37 of the NDPS Act have not been fulfilled.

2.The second bail application has been filed before this Court mainly on three grounds. The first ground is that the petitioner has suffered incarceration for nearly four years and five months and that A3 was granted bail by this Court in Crl.O.P.No.28975 of 2022, after considering the long incarceration. The second ground that was urged before this Court is by pointing out to the deposition of the witnesses in the course of trial in C.C No.13 of 2019 on the file of the Ist Additional Special Court for exclusive trial of cases under NDPS Act at Chennai. The third ground on which the bail has been sought for is by showing the medical certificate of the mother of the petitioner, who is said to be in the very serious condition and is taking treatment at Amaravathy, Maharashtra.



3.This bail application has been opposed by the respondent by filing a detailed counter. The learned Special Public Prosecutor has also opposed this bail application mainly on the ground that the petitioner has not satisfied the twin conditions under Section 37 of the NDPS Act and that the examination of witnesses on the side of the prosecution is almost at the verge of completion.

4.In the considered view of this Court, where the case involves commercial quantity, the twin conditions imposed under Section 37 of the NDPS Act must be satisfied, failing which, no bail can be granted. In order to satisfy this ground, the learned counsel for the petitioner has brought to the notice of this Court the deposition of the witnesses in the pending case in C.C.No.13 of 2019.This Court cannot take into consideration, the deposition of the witnesses while considering this bail application, since any finding rendered by this Court will have a bearing in the final decision to be taken by the trial Court after the completion of the trial. Therefore, this Court has to necessarily restrain itself from giving any finding on the merits of the case by going into the deposition of the witnesses in C.C.No.13 of 2019.



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5. Insofar as the ground that was urged by the learned counsel for the petitioner, with regard to the bail that was granted to A3, this Court passed the following order on 28.02.2023.

When A3 viz., Sushil M Thakare filed a bail petition in Crl.O.P.No.10821 of 2019, I dismissed the bail petition on merits by an order dated 17.05.2019. On going through the records, it is seen that the very same accused person has filed a subsequent bail application in Crl.O.P.No.28975 of 2022. As per the specific directions issued by the Hon'ble Apex Court, this bail application ought to have been posted before me, since I dismissed the earlier bail application. However, the Registry has posted this bail application before another Hon'ble Judge. It is not known whether this fact was brought to the notice of the other Hon'ble Judge, who dealt with the bail application in Crl.O.P.No.28975 of 2022. However, the fact remains that the bail application was allowed by an order dated 12.12.2022. At that particular point of time, I was sitting in the Principal Bench and the said bail application ought not to have been listed before the other Hon'ble Single Judge.

2. By citing the above order, the other accused person viz., A1 has filed Crl.O.P.No.2272 of 2023 seeking for bail. Even the earlier



application filed by this accused person was dealt with by me and it was dismissed by an order dated 08.05.2019.

3.Registry is directed to give an explanation as to how Crl.O.P.No.28975 of 2022 was posted before the other Hon'ble Judge when the earlier bail application was dismissed by me in Crl.O.P.No.10821 of 2019.

4.Post this bail application for hearing on 02.03.2023.

6.Pursuant to the above order, the Registry has circulated a note and it has been stated that the bail application was posted before another Hon'ble Judge by oversight and the Registry has sought for condoning the lapses on their part. In the considered view of this Court, the bail granted to A3 cannot be cited as a precedent in this bail application.

7.It was brought to the notice of this Court that PW5 was put in the witness box and the examination-in-chief was completed on 06.12.2022. Thereafter, the said witness has been cross-examined on 03.01.2023, 20.02.2023 and 01.03.2023. In spite of such a long cross-examination, the matter was once again adjourned to



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02.03.2023 for continuation of cross-examination and on that day this witness was not cross-examined. Hence, the trial Court has closed the evidence of PW5.

Thereafter, an application has been filed under Section 311 of Cr.P.C. to recall and reopen the evidence of PW5. This is the manner in which the trial is going on in this case. It is true that time was fixed by this Court for the completion of the trial. However, in the meantime, there was intervention due to the COVID pandemic. Thereafter, the accused persons should cooperate for the completion of the trial at the earliest and they cannot keep on cross-examining the witnesses endlessly and thereby, prolong completion of the trial. In view of the same, the attitude of the accused persons in dragging on with the proceedings, should also be taken into consideration by this Court while dealing with the bail application of A1.

8.The petitioner belongs to Maharashtra and he wants to visit his mother at Maharashtra. The case is now at a crucial stage and it is almost in the verge of completion. At this stage, this Court is not inclined to enlarge the petitioner on bail. Rather this Court wants to fix a time limit for the completion of the trial and for pronouncing the final judgment.



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9.In the light of the above discussion, this Criminal Original Petition stands dismissed and there shall be a direction to the Ist Additional Special Court for exclusive trial of cases under NDPS Act at Chennai to complete the proceedings in C.C.No.13 of 2019, on or before 25.04.2023 and file a compliance report before this Court.

SSR

06.03.2023

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