



Crl.O.P.No.2375 of 2023

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T.V.THAMILSELVI,J.

The petitioner, who was arrested and remanded to judicial custody on 24.10.2019 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c), 25, 28 and 29 of Narcotic Drugs and Psychotropic Act, 1985, in NCB F.No.48/1/13/2013 NCB/MDS on file of the respondent, seeks bail.

2. The case of the prosecution is that on 24.10.2019, on receipt of the secret information, the respondent and his team went to the scene of occurrence, wherein they found that the accused were illegally transporting 187.300 Kilograms of brownish green colour dry leaves believed to be Marijuana (Ganja) in their car bearing registration No.AP-09-AS-8191. Hence the case.

3. Learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He further submitted that the petitioner is only an acting driver and he has no knowledge about the availability of contraband in the car and he is no way connected with the alleged offence. He also submitted that even as per the prosecution, the alleged contraband was recovered after sunset, whereas, as per Section



42(1) of the NDPS Act, the search would be conducted between the sunset and sunrise only after recording the grounds of his belief, thereby, the present case has been proceeded against Section under 42(1) of the NDPS Act.

4. Learned counsel for the petitioner further relied upon the Hon'ble Apex Court judgment in *Mohinder Kumar Vs. State, Panaji, Goa*, reported in (1998) 8 SCC 655, which is extracted hereunder:-

3. In the instant case, the facts show that he accidentally reached the house while on patrolling duty and had it not been for the conduct of the accused persons in trying to run into the house on seeing the police party he would perhaps not have had occasion to enter the house and effect search. But when the conduct of the accused persons raised a suspicion he went there and effected the search, seizure and arrest. It was, therefore, not on any prior information but he purely accidentally stumbled upon the offending articles and not being the empowered person, on coming to know about the accused persons being in custody of the offending articles, he sent for the panchas and on their arrival drew up the panchnama. In the circumstances,



from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. Under Section 42(1) proviso, if the search is carried out between sunset and sunrise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realising that the accused persons were in possession of charas. He also did not forward a copy of the grounds to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to Section 42(1). He also did not adhere to the provisions of Section 50 of the Act in that he did not inform the person to be searched that if he would like to be taken to a Gazetted Officer or a Magistrate, a requirement which has been held to be mandatory.”

He further submitted that though the petitioner is in custody from the year of 2019, there is no progress in the trial in C.C.No.38 of 2020 pending on the file of the learned 1st Additional Special Judge, Special Court



Crl.O.P.No.2375 of 2023

under Exclusive Trial of Cases under NDPS Act, Chennai. Hence, he prays to grant bail to the petitioner.

5. Learned Special Public Prosecutor appearing for the respondent submitted that the petitioner (A1) along with the other accused were illegally transported 187.300 Kilograms of brownish green colour dry leaves believed to be Marijuana (Ganja) in their Toyota Corolla car bearing registration No.AP-09-AS-8191. He further submitted that the investigation has been completed and during the course of investigation, the respondent finds that the registration number of the said car does not belong to the Toyota, but it belongs to one Maruti. He further stated that the case has been taken up on the file of the learned 1st Additional Special Judge, Special Court under Exclusive Trial of Cases under NDPS Act, Chennai in C.C.No.38 of 2020. He also stated that the petitioner belongs to the State of Odisha, therefore, if he is released on bail at this stage, there is every possibility of the petitioner to abscond and it would derail the progress of trial. He also submitted that till date, the second accused in this case has not engaged an Advocate to defend his case, thereby, there is no progress in trial and on considering the conduct of the accused shows that they are not interested to co-operate for the trial and



CrI.O.P.No.2375 of 2023

it should not be encouraged. Hence, he vehemently opposed to grant bail to the petitioner.

6. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent and perused the entire materials available on record.

7. Taking into consideration the facts and circumstances of the case, the submissions made by the learned Special Public Prosecutor that the case has been taken up on the file of the learned 1st Additional Special Judge, Special Court under Exclusive Trial of Cases under NDPS Act, Chennai in C.C.No.38 of 2020, this Court is not inclined to grant bail to the petitioner.

8. Accordingly, this Criminal Original Petition stands dismissed. However, the learned trial Judge is directed to give one more opportunity to the second accused to engage an Advocate on his own, if he fails to engage an Advocate, on the next date of hearing, the learned trial Judge may appoint an Advocate through legal aid and complete the trial as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.



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Crl.O.P.No.2375 of 2023

14.02.2023

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Crl.O.P.No.2375 of 2023



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CrI.O.P.No.2375 of 2023

14.02.2023