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Crl.O.P.No. 4516 of 2023

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T.V.THAMILSELVI, J.

The petitioner, who was arrested and remanded to judicial custody on 15.04.2021 for the alleged offence under Sections 8(c) r/w 20(b)(ii)(c), 23(c), 28 and 29 of NDPS Act in R.R. No.7 of 2021 on the file of the respondent police in N.C.B.F.No.48/1/04/2021/NCB/MDS, seeks bail.

2. The case of the prosecution is that on 09.04.2021, on a secret information in indulging in trafficking of Hashish to Sharjah, thereby procured around 3 kgs. of hashish, which was concealed and kept in a carton box and handed over the same to one Karpagam, resident at Sharjah and also informed that if the carton box is checked, hashish can be recovered from her. Based on the same, when the respondent intercepted her along with his team mounted the surveillance at Kamarajar Domestic Terminal, Chennai Airport, and conducted search on the luggage of her and found a box dumped with gift articles of glass and plastic, in which 6 packets each weighing 500 grams packet contains dark brown in colour of

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substance seems to be 3 kgs. of Hashish. On enquiring her, she revealed that she had received the said purported contraband from A2 on the instructions of this petitioner/A3. Accordingly, the complaint was registered against the petitioner.

3. The learned counsel for the petitioner submitted that even according to the prosecution, the case property of 3 kgs. of hashish was not seized from him and the informant also did not say anything about the petitioner's involvement. Furthermore, on the confession of A1, the petitioner was implicated as accused in this case and he was arrested on 11.04.2023. A2, who is a person introduced him and gave the number and details of A1, which is not corroborated with the statement at all. Except the confession statement, there is no material evidence against this petitioner and he was enquired at Hyderabad office. He would submit that the respondent completed the investigation and filed charge sheet before the trial court in C.C.No. 256 of 2021. He would submit that he has not at all committed any offence as alleged by the respondent police and he is no way connected with the occurrence. He would further submit that the



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petitioner has been suffering incarceration for more than two years from 14.04.2021. He would submit that alleged contraband was seized from A1 Karpagam and not from this petitioner and to that effect, he has produced mahazar and this is the second petition seeking for bail. Hence, he prayed to grant bail to the petitioner.

4. The learned Special Public Prosecutor for NCB cases appearing for respondent filed his counter stating that the accused knowingly and fully involved in the above attempt to internationally traffic 3 kgs. of seized Hashish. He has played an important role being the connecting link between the kingpin Nazeem and the courier A1, who was attempting to smuggle this seized 3 kg. of Hashish in her luggage from India to a foreign country and thus the petitioner has enabled the establishment of an international drug trafficking ring. The involvement of the petitioner is further confirmed by the fact that he has called A2 through his phone on his No. 7538866881 a day prior to the seizure of 3 kgs. purported Hashish i.e. 08.04.2021, which has also been mentioned by A2 in his voluntary statement dated 11.04.2021. Thus, it would confirm the revelations of A2



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and establishes the connecting link between A1, A2 and A3. Furthermore, the petitioner from his No.6290724096 has called A2 on No.7538866881 on the day of seizure to confirm the status of delivery of the contraband. This fact was also revealed by A2 in his statement dated 11.04.2021. Such corroborations point to the absolute involvement of the petitioner in the mentioned attempt to smuggle 3 kgs. of seized Hashish to a foreign country. Even though, according to the Petitioner, he was faraway and was not apprehended at the spot of seizure he has played a major role in facilitating this attempt to smuggle 3 kgs. of seized Hashish internationally by providing the supplier Nazeem with the services of courier, A1 to traffick drugs internationally. It also points to the possibility that the petitioner knew that being caught in possession of a contraband entails stricter punishment than being apprehended without possession of contraband and therefore, the petitioner made a knowing attempt to stay away from possessing the contraband and involved himself with only facilitating the transport of the contraband through a courier. Further, it is essential to note that the CA of phone No.6290724096 reveals that it is registered in the name of the petitioner and thus, this fact establishes the link between the



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petitioner and the phone calls, he has made to the supplier Nazeem, A1 and A2. Thus, a robust link is established between the petitioner and all the other accused in the case. It is also important to note that the Reverse CDR report (foreign phone number CDR report) received from Jio Infocomm for Nazeem's phone number shows that two calls were made from Nazeem's foreign phone No.094769006829 (Dubai phone number) with one call being made to the petitioner on 28th February, 2021 and another phone call to A1 on 21st January 2021. This shows that the main organizer Nazeem was in touch with all the individuals involved in the transaction to traffick 3 kg. of seized Hashish. He would further submit that the seized contraband is a commercial quantity and even though the petitioner is not caught in possession of the contraband, Sec.37 still is a bar for grant of bail subject to conditions mentioned for grant of bail. Sec.37 of NDPS Act is attracted and the petitioner has to satisfy the twin condition of Sec.37 of NDPS Act, that the petitioner has to satisfy this Court that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, but the petitioner has failed to satisfy the conditions laid down under Sec.37 of the Act. However, the charge sheet



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was also filed and A1 was arrested on 14.04.2023 along with contraband on the basis of a transit warrant. He would also submit that in the F.I.R., his name does not found place and after arrest of A1, her statement under Sec.161 was recorded and subsequently, he was implicated as accused. He would submit that now the investigation is completed and the charge sheet filed in C.C.No. 256 of 2021, on the file of II Addl. Special Court for NDPS Cases at Chennai and if he is released on bail, he would tamper the witnesses and hamper the investigation. Further, the prosecution raised objection that during enquiry, this petitioner revealed about his role with regard to the possession and arrangement of consignment for A1. Hence, he vehemently opposed to grant bail to the petitioner.

5. On seeing the facts, the petitioner is arrayed as A3 and this petitioner belong to Telengana and he has also arranged money to purchase the contraband. A2 aided the above trafficking on the instructions of this petitioner/A3, who has arranged the services of A1 for delivering the seized contrabands of 3 kgs. of Hashish in Sharjah and A2 acted as kuruvi for this petitioner in an earlier occasion also. Furthermore, the contraband of 3 kgs. of hashish recovered at the time of occurrence, which is a commercial



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quantity. Considering the above facts and circumstances of the case and the submissions made by both counsel and also considering gravity of offence committed by the petitioner and the contraband seized from the accused person, which is a commercial quantity and the investigation is completed and now the charge sheet filed in C.C.No. 256 of 2021, on the file of II Addl. Special Court for NDPS Cases at Chennai and trial would be commenced and also considering the fact that if he is released on bail, there is possibility of tampering the witnesses and hampering the investigation and also there is no change of circumstances, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed. However, the trial court is directed to complete the trial and dispose the case within a period of five months from the date of receipt of copy of this order.

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