



Crl. O.P. No.4866 of 2023

Dr.G.JAYACHANDRAN, J.

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The second bail petition filed by the accused who is facing trial for alleged possession of narcotic drug of commercial quantity (5 kgs Methamphetamine). Totally four accused were in occupation of No.12, Vijayanagar, 2nd Street, Valasarawakkam, Chennai – 600 087. Based on specific and reliable information, a team of Narcotics Control Bureau (NCB) officials searched the said premises and recovered 5 kgs of Methamphetamine (ICE) and Yamaha scooter bearing registration No.TN 10 AM 6864. One Ramesan who has let out the premises to the first accused is one of the witness for the seizure of contrabands. All the four accused were summoned to NCB office and after recording their statements under Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), they were arrested on 14.02.2020.

2. One of the accused, by name Gopal, was granted bail by this Court in Crl. O.P. No.2621 of 2023 vide order dated 13.02.2023. This petitioner who earlier sought for bail in Crl.O.P. No.3387 of 2022 came up for consideration by this Court and this Court dismissed the bail petition on 03.03.2022 observing that the prosecution has brought out prima facie material against the petitioner being involved in transporting, possessing psychotropic substance above the notified commercial quantity and therefore bail can be granted only subject to Section 37 of the NDPS Act, whereas, in this case there is no satisfactory material to infer the



accused not guilty. However the second bail petition is filed and listed before this Court as per the roster.

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3. The learned counsel appearing for the petitioner submitted that there is a change in circumstance which has forced the petitioner to seek for bail again. According to the learned counsel, prolonged delay in commencement of the trial has to override the embargo laid under Section 37 of NDPS Act. As per the judgements of the Hon'ble Supreme Court rendered in the cases of *Rabi Prakash vs. The State of Odisha* (2023 LiveLaw (SC) 533), *Mohd.Muslim alias Hussain Vs. State (NCT of Delhi)* (2023 SCC Online SC 352) and *A.Tamilarasan Vs. State Rep by the Inspector of Police (I.A. No.20386 of 2023 dated 29.03.2023)* wherein, the Hon'ble Supreme Court has observed that the embargo under Section 37 of the NDPS Act has to pave way to Article 21 of the Constitution of India in case of prolonged delay in completing the trial. The learned counsel also relied upon the bail granted to the co-accused by name Gopal on the ground of prolonged delay in commencement of trial.

4. Learned Special Public Prosecutor for NCB submitted that the judgments of the Hon'ble Supreme Court cited by the learned counsel for the petitioner are by two Judges Bench, whereas, the issue of delay in trial vis-a-vis Section 37 of the NDPS Act being considered at length by a Full Bench of the Hon'ble Supreme Court in the case of *Narcotics Control Bureau vs Mohit Agarwal* (MANU/SC/0899/2022) consisting of Hon'ble Chief Justice of India and two other



companion Judges wherein, the significance of Section 37 of NDPS Act vis-a-vis personal liberty being taken into consideration and the Hon'ble Supreme Court has held that unless reasonable ground for believing that the accused is not guilty of the offence that he has been charged with and is unlikely to commit an offence under the Act while on bail, Court cannot exercise power of granting bail.

5. Further learned Special Public Prosecutor for NCB also pointed out that while the co-accused Gopal granted bail, the prosecution was not able to commence the trial due to various reasons but as on date already four witnesses examined and others being summoned, including some of the accused has not engaged counsel to cross examine the witnesses who had marshalled by the prosecution. Further submitted that person who was granted bail is an Indian National, whereas the petitioner herein is a Srilankan. If bail granted to him for any reason, it will be difficult for the Court to secure him while conducting the trial and the possibility of jumping bail is high.

6. Heard learned counsel for the petitioner and learned Special Public Prosecutor for NCB.

7. It is the case where NCB on specific information had raided a closed premises and had seized 5 kgs of Methamphetamine as psychotropic substances which is commercial quantity as per the table annexed to the Act. All the four accused had conscious possession over the contraband and being satisfied, after recording their statement under Section 67 of the NDPS Act, they were arrested.



No doubt one of the accused been released on bail on the premise that the prolonged delay in commencement of the trial has enured him right of liberty enshrined under Article 21 of the Constitution of India which has to pave way to the rigidity of the Section 37 of the NDPS Act.

8. When Statute prescribes certain mandatory conditions and the Constitution Bench of the Hon'ble Supreme Court has time and again reiterated that Section 37 of the NDPS Act cannot be violated and any bail order which is conspicuously silent about the reasonable belief of the Judge that the accused is not guilty of the offence, such bail order is contrary to the provision and cannot be sustained.

9. Though a Division Bench of the Hon'ble Supreme Court taking note of inordinate delay in trial had considered Article 21 to delve upon Section 37 of the NDPS Act, it is only an inception to the general Rule and cannot be the precedent in all cases where the trial is not completed within the expected reasonable time. The cause for delay in conducting trial may be for various reasons, in most of the cases, this Court knows that the accused to avoid inevitable and enjoy most of the period as undertrial rather than undergo the rigour of convict try to prolong the trial so that they can set off the period already undergone as undertrial under Section 428 of Cr.P.C.



10. In this case also, as the learned Special Public Prosecutor pointed out that the accused instead of cooperating with the trial, had not engaged counsel and therefore that has caused impediment for the prosecution to proceed with marshalling witness. That apart the bail granted to Gopal who is an Indian National cannot be taken for parity with the Foreign National who has no roots in the the Country. The offence of great ramification and international impact has to be considered seriously. The individual personal liberty of a foreigner cannot be given predominance as against the public safety, security and tranquility. This cannot be treated in par with other IPC offences where human conducts alone is involved. Therefore this Court is not convinced with the submissions made by the learned counsel for the petitioner to revisit the earlier order of this Court in the light of the bail granted to the co-accused who is an Indian National and the general observations made by Division Bench of the Hon'ble Supreme Court without reference to the Constitutional Bench judgments which covers the impact of Section 37 of the NDPS Act. Accordingly, this bail petition is dismissed.

08.08.2023

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