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Crl.O.P.No.5213 of 2023

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A.D.JAGADISH CHANDIRA, J.

The Criminal Original Petition has been filed by the petitioner seeking to enlarge him on bail in C.C.No.382 of 2022 pending trial on the file of the Principal Special Court under EC & NDPS Act Cases, Chennai, in connection with R.R.No.38 of 2021 registered on the file of the respondent.

2. The case of the prosecution is that on 08.12.2021, at about 23.00 hours, the petitioner holding Indian Passport No.U2972052 issued at Tiruchirappalli dated 20.11.2020 had cleared his immigration and was proceeding to the security hold area in the departure terminal of the Anna International Airport to travel abroad with his one hand baggage and one purple black stroller bag. On receipt of the specific information, the petitioner was intercepted and asked to produce his travel documents for his boarding and the check-in luggage for examination. Later, he was called back to the customs counter by the Customs Officer in the presence of witnesses.



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3. Before examination of baggage and search of person, provisions under Section 50 of NDPS Act and Section 102 of Customs Act, 1962 were explained to the petitioner. During enquiry, the petitioner became nervous and on persistent questioning by officials, the petitioner had accepted to concealing narcotics wrapped in adhesive tapes in his rectum and he had agreed to voluntarily eject the same. Thereafter, the petitioner/accused was taken to the toilet along with the witnesses and he voluntarily ejected two bundles wrapped with adhesive tapes and after washing it, handed over the same to the officer in the presence of the independent witnesses. The said bundles were cut open and found to contain 99 grams of Methamphetamine Hydrochloride. Thereby, the petitioner was arrested on 09.12.2021 and remanded to judicial custody on 10.12.2021.

4. The respondent had filed the case for the offences punishable under Sections 9(A) r/w 23, 25A, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and after completion of investigation, the complaint was filed for the offences punishable under Sections 8(c) r/w 22(C), 23(C), 28 and 29 of NDPS Act, 1985. Thereafter, the case has been



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taken up for trial in C.C.No.382 of 2022, on the file of the Principal Special Court under EC & NDPS Act Cases, Chennai.

5. Mr.Abdul Basith, learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely being implicated in this case. He further submitted that this is the second application for bail filed by the petitioner before this Court and his earlier bail application filed in Crl.O.P.No.21189 of 2022 pending investigation was dismissed by this Court on 26.09.2022. Thereafter, on completion of investigation, the complaint came to be filed by the prosecution and the copies have been served on the petitioner on 30.11.2022. He further submitted that only after the petitioner came into the possession of the complaint, he could find that materials available to substantiate his case to satisfy the twin conditions required under Section 37 of NDPS Act for grant of bail, which were not pleaded or placed before this Court during the hearing of the earlier petition.

6. Learned counsel for the petitioner further submitted that perusal of complaint shows that the arrest and remand of the petitioner are done in violation of Article 21 of Constitution of India and Section 50 and 57 of



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Cr.P.C. He also submitted that the petitioner was intercepted on

08.12.2021 at 11.00 pm and the alleged search and seizure proceedings

were completed as early as 09.12.2021 at 11.30 am, while so, the petitioner

was shown as officially arrested on 09.12.2021 at 5.30 pm and produced

before the trial Court on 10.12.2021 at 6.15 p.m., after the lapse of 24

hours. He further submitted that the arrest of the petitioner was also not

intimated to his family members as mandated under the provisions of

Cr.P.C. He also submitted that the prosecution has not complied with the

provisions under Section 50(1) and 52(A) of the NDPS Act and thereby, it

vitiates the trial.

7. He also submitted that the Hon'ble Supreme Court has viewed

infraction of Section 52(A) seriously and in several cases has acquitted the

accused and since there are violation of mandatory conditions, there is

every possibility of the petitioner being acquitted. He further submitted

that the passport of the petitioner is also seized by the respondent and

therefore there is no possibility of the petitioner to flee away from the

country. He further submitted that the petitioner is languishing in jail for

almost two years from 09.12.2021, whereas, there is no progress in the

trial. Therefore, on account of the long incarceration the petitioner is



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entitled to bail. Further, he relied on the judgment of this Court in

Crl.O.P.No.5082 of 2023 dated 29.09.2023 and sought for bail.

8. In support of his contention, the learned counsel for the petitioner further relied on the following judgments :-

Violation of Section 50 of NDPS Act:

1. ***State of Punjab v. Baldev Singh*** reported in AIR 1999 SC 2378 ;
2. ***Vijaysinh Chandubha Jadeja vs. State of Gujarat*** reported in (2011) 1 SCC 609 ;
3. ***State of Rajasthan vs. Parmanand & another*** reported in (2014) 5 SCC 345 ;
4. ***Nithin vs. State of Kerala*** in Bail application No.946 of 2023 (High Court of Kerala) ;
5. ***Emeka Emmanuel vs. The state*** Bail Application No.1231 of 2022 (High Court of Delhi);
6. ***Basanth Balram vs. State of Kerala*** Bail application No.8553 of 2018 (High Court of Kerala).

Violation of Section 52(A) of NDPS Act:

7. ***Union of India vs. Mohanlal*** reported in (2016) 3 SCC 379 ;
8. ***Bothilal vs. The Intelligence Office, NCB*** reported in Manu/SC/0457/2023 ;



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Violation of Article 21 and 22 of Indian Constitution and Section 57 of Cr.P.C. :

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9. *Manoj vs. State of Madhya Pradesh* reported in (1999) 3 SCC 715 ;
10. *Mohd Muslim @ Hussain vs. State (NCT of Delhi)* reported in 2023 Live Law SC 260 ;
11. *Sk.Hussain Vs. State of Orissa* in Crl.M.C.No.3703 of 2022 (High Court of Orissa)

9. Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor appearing on behalf of the respondent submitted that it is the case where the petitioner attempted to smuggle 99 grams of Methamphetamine Hydrochloride "Commercial Quantity", by concealing it in his rectum and on the same day, at the same time, the petitioner's mother, aunt and neighbour were also arrested for adopting the same method and attempting to smuggle 99 grams of Methamphetamine Hydrochloride each, by concealing it in their rectum. He further submitted that separate complaints have been filed against them and those cases are also pending trial. He further submitted that the attempt was made in a well organized manner to smuggle the contraband, which is a commercial quantity, out of the country. He also submitted that the issue of whether there is a violation of Section 52(A) of NDPS Act is there or not is a matter of evidence and the



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decision of that issue can be taken only at the time of trial, which can be adjudicated during the course of time by examination of witnesses. He further reiterated that it is the case where the petitioner and his family members had attempted to smuggle contraband, by concealing it in their rectum and it is clearly serious in nature.

10. Learned Special Public Prosecutor submitted that the facts in the case referred by the learned counsel for the petitioner in Crl.O.P.No.5082 of 2023 are different from the present case. Further, in Crl.O.P.No.5082 of 2023, the recovery was not made from the person of the accused and this Court, taking into consideration the fact that the delay in conducting the trial is on the part of the prosecution, had granted bail and whereas, in this case, the prosecution is not responsible for the delay and the accused is delaying the trial by not engaging a counsel to defend his case. Hence, he opposed for grant of bail to the petitioner.

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



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12. It is the case where the petitioner, along with his near relatives had attempted to smuggle commercial quantity (99 grams) of Methamphetamine Hydrochloride, by concealing it in their rectum. Considering the above facts of the case, this Court is of the opinion that violation of Section 52(A) is the matter to be decided during the course of trial by examining the witnesses. Further, as stated by the learned Special Public Prosecutor, the facts in Crl.O.P.No.5082 of 2023 are different from the facts of the present case. In that case, the alleged contraband is stated to have been effected at a Courier Office, whereas, in this case, the contraband is alleged to have been concealed in the rectum and it is recovered from the petitioner's person.

13. Further, this Court feels that the violation of mandatory provisions are matter for trial. Taking into consideration the facts and circumstances of the case and also considering the manner and the mode in which the petitioner has attempted to smuggle Methamphetamine Hydrochloride, this Court is of the view that the crime is of serious nature and this Court doesn't seem to find any reasonable grounds for believing that the petitioner is not guilty of such offense. Therefore, this Court is not inclined to grant bail to the petitioner.



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WEB COPY 14. At this juncture, it is represented by the learned counsel for the petitioner that after two years, the respondent has filed an application to bring four additional witnesses to examine in the trial. He further submitted that considering the long incarceration suffered by the petitioner, a direction may be issued to the trial Court to complete the trial as expeditiously as possible.

15. Accordingly, this Criminal Original Petition stands dismissed. However, the learned Judge, Principal Special Court under EC & NDPS Act Cases, Chennai, is directed to proceed with the Case and dispose of the Case within a reasonable period of six (6) months from the date of receipt of the copy of this order.

17.11.2023

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