



Crl.O.P.No.7339 of 2023

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A.D.JAGADISH CHANDIRA, J.

The Criminal Original Petition has been filed to enlarge the petitioner on bail pending trial in C.C.No.186 of 2022 on the file of the learned Principal Special Judge for NDPS Act Cases at Chennai, in connection with Crime No.68 of 2022 registered for the offence under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(i) of NDPS Act.

2. The case of the prosecution is that on 01.04.2020 at about 02.30 hours, on receiving the secret information, the de-facto complainant/Inspector of Police, attached to F4 Kavarapettai Police Station, Tiruvallur, entered the same in the General Diary, along with his team conducted a vehicle check up, during which, they found that the accused were in illegal possession of 33 Kilograms of Ganja, which comes under commercial quantity, in their red colour scpio car bearing registration No.KL-21-E-0072. The respondent have arrested the accused 1 & 2 and seized the dry ganja under cover of seizure mahazar. Hence the case.



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3. Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He further submitted that since the alleged contraband is stated to have been recovered from the private car, the respondent has not complied with the due process of law, thereby, there was a violation of Section 42 of NDPS Act. In support to his contention, he pointed out the judgement of *Boota Singh vs. State of Haryana* reported in *2021 AIR Online 2021 SC 198*, where it has been held that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act and thereby, the case would come under Section 42 of NDPS Act and it requires strict compliance of Section 42 of NDPS Act and therefore, search without warrant is impermissible and thereby, the petitioner is entitled for acquittal and also the petitioner have satisfied the conditions as contemplated under Section 37 of NDPS Act. He also submitted that the petitioner is in custody from 14.02.2023, hence, he prays for grant of bail to the petitioner.



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4. Learned Government Advocate (Crl.Side) appearing for the respondent submitted that in the case of *Union of India through Narcotics Control Bureau, Lucknow vs. Md.Nawaz Khan* reported in *2021 10 SCC 100*, the Hon'ble Apex Court held that whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact and it can be raised during the trial. He further submitted that there are 8 witnesses in this case and the case now stands posted for examination of LW1 on 19.04.2023 and therefore, the prosecution would be able to complete the trial as expeditiously as possible. Hence, he object for grant of bail to the petitioner.

5. At this juncture, the learned counsel petitioner seeks permission of this Court to withdraw this petition and he has also made an endorsement to that effect. He further prayed that liberty may be granted to the petitioner to raise all these grounds before the trial Court and also prayed that direction may be issued to the trial Court to complete the trial as expeditiously as possible.



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6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record.

7. In view of the above submissions and the endorsement made by the learned counsel for the petitioner, this Criminal Original Petition is dismissed as withdrawn. However, direction is issued to the trial Court to 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.

18.04.2023

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