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CrL.O.P.No.8389 of 2023

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Reserved on 13.07.2023	Pronounced on 19.07.2023
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G.CHANDRASEKHARAN, J.

This petition is filed to enlarge the petitioner on bail in Spl.C.C.No.54 of 2022, on the file of the Special Court for EC and NDPS Act Cases, Salem.

2.The learned counsel for the petitioner submitted that petitioner is the third accused in Spl.C.C.No.54 of 2022, pending on the file of the Special Court for EC and NDPS Act Cases, Salem. Petitioner is no way connected with the seizure of Ganja from the accused 1 & 2. He has been falsely implicated in this case on the basis of the confession statement of accused 1 & 2. There is no other incriminating material to implicate the petitioner in this case. Petitioner is in judicial custody from 10.07.2021. There is no progress in the trial. At this stage, the Court is required to *prima facie* satisfy from the materials on record that the accused is not guilty. It is not necessary to have a roving enquiry. In support of his submissions, he relied on the judgment of the Hon'ble



Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***

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reported in ***2023 Live Law (SC) 260***, wherein it is observed as follows.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this



court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

3.In response, the learned Special Public Prosecutor submitted that respondent seized 360.950 Kgs of Ganja at Pallikanda Toll Plaza, Vellore on 09.07.2021, from a truck bearing Registration No.TN-69-AE-3397 and arrested 4 persons. On 09.07.2021, petitioner procured Ganja at Andhra Pradesh loaded with Ganja in the vehicle brought by A1 & A2, travelled with them till Nayudupetta. At about 3.30 a.m., on 09.07.2021, he handed over the possession of the contraband to the other accused and



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proceeded to his home to avoid getting caught red handed with the contraband. After coming to know about the petitioner's involvement in the crime, he was subsequently arrested. Petitioner used cell phone no. 9626287820. Through this cell phone no.9626287820, he made calls to A1 to his cell phone no.9789799005 and A4 to his cell phone nos.8668148803 & 9790292383. The cell phone circle tower location shows that petitioner was roaming in Andhra Pradesh circle during 05.06.2021 to 08.07.2021. It is clearly established that petitioner was also part of the criminal conspiracy in the illegal procurement of Ganja and its transportation. Ganja involved in this case is a commercial quantity. Unless petitioner satisfies the twin conditions under Section 37 of NDPS Act, he is not entitled for bail. In support of his submissions, the learned Special Public Prosecutor produced the reverification prepaid customer application form for cell phone no.9626287820 and call details to show the calls made from and to the aforesaid cell phone number of the petitioner.

4.Considered the rival submissions and perused the records.



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5. Admittedly, it is the case where accused 1 & 2 were caught red handed with 360.950 Kgs of Ganja at Pallikanda Toll Plaza, Vellore, on 09.07.2021, in a truck bearing Registration No.TN-69-AE-3397. Petitioner is the third accused in this case. It is true that respondent had recorded the confession statement of the co-accused and that of the petitioner, wherein, they admitted the involvement of petitioner in procurement and transportation of Ganja. It is also true that as per the judgment of the Hon'ble Supreme Court in ***Tofan Singh vs The State Of Tamil Nadu***, the statement recorded under Section 67 of NDPS Act is inadmissible. However, in the case before hand, respondent relies not only on the statement of the accused, but also the call details and tower location to show that the petitioner was in Andhra Pradesh at the relevant point of time for procurement of Ganja and he had also travelled with A1 & A2 after procuring Ganja to some point. The call details produced show the communications between petitioner with A1 & A4. More specifically, there were cell phone conversation between petitioner and A1 on 06.07.2021 & 07.07.2021. There is no proper explanation from



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the petitioner as to his visit to Andhra Pradesh. When there is no proper and valid explanation forthcoming, justifying the petitioner's visit to Andhra Pradesh and when there are materials, especially, recovery of commercial quantity of Ganja and cell phone tower locations to show that petitioner was in Andhra Pradesh when the Ganja was procured and travelled with A1 and A2 in a truck loaded with Ganja till Nayudupetta, this Court is of the view that there are materials available for framing appropriate charges against the petitioner to proceed with trial.

6.In view of the aforesaid materials, this Court cannot form an opinion that there is a reason to believe that the petitioner had not committed offence under NDPS Act and that he shall not commit any such offence while on bail. Thus, petitioner is not entitled for bail and this Criminal Original Petition is dismissed.

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19.07.2023



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G.CHANDRASEKHARAN , J.

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Pre-Delivery Order in
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19.07.2023