



CrI.O.P.No.8871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 28.07.2023	Orders pronounced on 04.08.2023
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.8871 of 2023

Vanthala Murali

... Petitioner

Vs.

Union, represented by
The Intelligence Officer
Narcotic Control Bureau
Chennai Zonal Unit
Ayapakkam
Ambattur, Chennai – 600 077.
(R.R.No.15 of 2019)

... Respondent

This Criminal Original Petition is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail pending trial in C.C.No.38 of 2020 before the file of I Additional Judge, Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

For Petitioner	: Mr.M.G.Martin Manivannan
For Respondent	: Mr.Rajendra Kumar Special Public Prosecutor



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ORDER

This Criminal Original Petition is filed praying to enlarge the petitioner on bail pending trial in C.C.No.38 of 2020 on the file of I Additional Judge, Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

2. The case of the prosecution, against this petitioner, as per the complaint allegations, in brief, is as follows:-

2.1 The Intelligence Officer, Narcotics Control Bureau, Chennai Zonal Unit Shri S.Saravanan, received an information that on 23.10.2019, one person namely Rama Siva and his associate namely Murali are indulging in trafficking of ganja. They procured around 180Kg of ganja from Andhrapradesh and would deliver the consignment in Chennai in a white colour Toyota Corolla vehicle bearing registration No.AP-09-AS-8191. They would be crossing Karanodai Toll Plaza at around 22.00hrs on 23.10.2019.



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2.2 Shri S.Saravanan, Intelligence Officer, typed this information and submitted the same to Shri Prakash R, Superintendent, NCB, Chennai. On further instruction from Superintendent, a team of officers of NCB, Chennai Zonal Unit led by Shri S.Saravanan reached Karanodai Toll Plaza at around 21.00hrs on 23.10.2019. Shri S.Saravanan approached Shri S.Kamal and Shri D.Lokesh Babu and conveyed them the information received and requested them to be independent witnesses for the search and seizure proceedings to be undertaken. Both of them agreed.

2.3 At around 22.00hrs, NCB team identified the white colour Toyota Corolla bearing registration No. AP-09-AS-8191, when it was about to enter the lane of Toll Plaza. Immediately, NCB team along with two independent witnesses approached the car and asked about the identity of two persons sitting in front of the car. The person driving the car revealed his name as M.Rama Siva and the person sitting besides him revealed his name as Vanthala Murali. Both informed that they were coming from Andhrapradesh and going to Chennai. Shri S.Saravanan introduced himself,



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his team and independent witnesses by showing their identity cards and he revealed the information received by him and enquired them whether they are in possession of ganja. Both replied in affirmative that they are in possession of around 76 packets of ganja in the dickey of the car. When Shri S.Saravanan offered them to take them for a search before a Magistrate or a Gazetted Officer, they declined and sought to be searched by NCB Officers. Rama Siva and Vanthala Murali opened the back door of the car and took out two number plates bearing Registration No.DL-7C-G-1333 kept in the rear side seat. Then, they folded the back side seat and showed square shaped packets wrapped with brown colour adhesive tape kept in the dickey of the car. They also informed that there is a problem in the dickey lock and could not be opened from outside of the car and they took out all the brown colour packets kept in the dickey.

2.4 Then Shri S.Saravanan, cut opened one packet and found that it contains brownish green colour dry leaves in it. Shri S.Saravanan, Intelligence Officer took a pinch of brownish green colour dry leaves and checked out with Drug Detection Kit, which answered positive for



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Marijuana (ganja) Narcotic drug. Similarly, all the remaining 75 packets were cut opened and tested with Drug Detection Kit and all answered positive for Marijuana (ganja). Since the contents of all the 76 packets were similar in all aspects, they were collected and transferred into 8 numbers of plastic gunny bags and marked from P-1 to P-8. P-1 to P-7 each weighed 25Kgs and P-8 weighed 12.300 Kgs, total of 187.300 Kgs. Two samples of 25 grams each were drawn from P-1 to P-8 bags and placed in a transparent polythene cover, heat sealed and placed in a brown coloured paper envelope, pasted, labeled and marked as S-1,S-2,(P-1) S-3, S-4 (P-2), S-5, S-6 (P-3), S-7, S-8 (P-4), S-9, S-10 (P-5), S-11, S-12 (P-6), S-13, S-14 (P-7), and S-15, S-16 (P-8) respectively and sealed with NCB Seal No.11. Packing materials used for concealment of the seized ganja were placed in a plastic gunny bag, labeled and sealed with NCB Seal No.11 and marked as P-9. Two number plates bearing No.DL-7C-G-1333 were packed and sealed with NCB Seal No.11 and marked as P-10.

2.5 The following items were found from the possession of Rama Siva and Vanthala Murali:-



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Items handed over by M.Rama Siva S/o.Sathi Babu

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1. Andhra Pradesh Transport Department, Certificate of Registration of two wheeler No. AP-31-CX-8467 in the name of M.Rama Siva
2. Copy of driving licence No. AP-13126110009668 in the name of Siva M.
3. Original Pollution under control certificate, Transport department Govt. of Haryana vehicle Regd. No.DL-7C-G-1333
4. Copy of IFFCO-TOKIO General Insurance in respect of Shri Virender, 30, Block A Veena Enclave, Ratan Part Nangloi, New Delhi of Vehicle Regd. No. DL-07-CG-1333.
5. Copy of Vehicle Regd. No. DL-7-CG-1333 in respect of Shri Virender, 30, Block A Veena Enclave, Ratan Part Nangloi, New Delhi

Items handed over by Vanthala Murali, S/o. Vanthala Gangaraju

1. Aadhar Card No.546783637169 of Vanthala Murali S/o Vathala Gangaraju
2. Andhra Pradesh Transport Department Certificate of Registration of vehicle No. AP-31-DX-4439 of Vanthala Murali.



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3. Indian currency Rs.3,040/- ($500 \times 6 + 10 \times 4 = 3,040/-$) of Vanthala Murali S/o Vanthala Gangaraju. They were also seized.

2.6 It is the case of the prosecution that Vanthala Murali knows M.Rama Siva for the past eight years. He came in contact with the person named Jog @ Bhagat of Orissa, whose mobile number is 9178701678. Jog @ Bhagat smuggles Ganja. In the mid of October 2019, Jog @ Bhagat enquired Vanthala Murali whether he can transport Ganja from Vizag to Chennai and promised to pay Rs.10,000/- for this job. Agreeing to this proposal, Vanthala Murali hired M.Rama Siva as driver to drive the vehicle from Vizag to Chennai on the payment of Rs.5,000/-. Vanthala Murali and Rama Siva met Jog @ Bhagat on 22.10.2019, who gave them white colour Toyota Corolla bearing registration No. AP-09-AS-8191 with 76 packets of ganja loaded in the dickey. He instructed them that they have to reach Madhavaram Bus Stand at Chennai on 24.10.2019, where one person will come and take delivery of the car along with ganja. Vanthala Murali and Rama Siva started from Vizag in the said vehicle on 23.10.2019 morning and reached Chennai Karanodai Toll Plaza at 10.00pm. They were



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intercepted and apprehended with ganja. The cellphone number of Rama Siva is 94925 55976. The cellphone numbers of Vanthala Murali is 89851 71870 and old number is 94939 52072. During the statement recorded under Section 67 of NDPS Act, both Rama Siva and Vanthala Murali accepted the illegal transportation of ganja. Chemical analysis report confirms that each of the eight samples is in the form of a heterogeneous mixture of plants parts such as stalks, flowering tops and seeds. Each sample is Cannabis (ganja) and is covered under NDPS Act 1985. Third accused Ajay Malik is the owner of the car. Ajay Malik after completing the name transfer formalities of the vehicle DL-7C-G-1333 proceeded to Andhra Pradesh in the same vehicle. His cellphone number tower location showed that he was in Hyderabad on 16.10.2019. Chillakallu Toll plaza vehicles movement shows that the vehicle number DL-7C-G-1333 has entered the toll plaza three times 1) Towards Vijayawada side on 06.10.2019 at 22.37 hrs. 2) Towards Hyderabad side on 15.10.2019 at 14.28 hrs. and 3) Towards Vijayawada side on 17.10.2019 at 06.22 hrs. Investigation revealed that the vehicle was available in Andhra Pradesh on 15.10.2019 and Ajay Malik had fabricated the documents relating to the vehicle. The mobile



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number used by Vanthala Murali 94939 52072 is subscribed in his name and the mobile number 89851 71870 is subscribed in the name of Korra Pallavi.

The CDR analysis of mobile number 89851 71870 used by Vanthala Murali reveals that he was in contact with Jog @ Bhagat in mobile numbers 91787 01678 and 87632 00714. Vanthala Murali contacted Jog @ Bhagat in mobile number 87632 00714 on 22.10.2019 and 23.10.2019, the dates on which the contraband was taken for delivery and transported. At the time of filing this complaint, Ajay Malik was absconding. Efforts were made to search Ajay Malik and Jog @ Bhagat, but they could not be traced. However, if any knowledge comes about their whereabouts, it will be duly intimated to the Court in due course and Jog @ Bhagat may be added as accused and prosecuted with the permission of the Court. Thus the complaint is filed against the accused under Sections 20(b)(ii)(c), 25, 28 and 29 of NDPS Act.

3. Learned counsel for the petitioner submitted that the petitioner is in judicial custody from 24.10.2019. First accused was released on bail. Third accused was arrested after a long delay. There is no information about



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the accused Jog @ Bhagat. Respondent has not even shown him as an absconding accused in the complaint. When it is claimed by the respondent that other accused in this case had involved in the transportation of ganja on the instruction of Jog @ Bhagat, the failure to secure Jog @ Bhagat for facing the trial is nothing but an inefficient and incomplete investigation by the respondent and it also shows that they are not interested in securing Jog @ Bhagat and prosecuting him. More importantly, it creates doubt in the case of the prosecution as to whether a person called Jog @ Bhagat is in existence or it is an imaginary character created by the respondent for illegally prosecuting other accused.

4. Learned counsel for the petitioner also submitted that there are lot of material irregularities and inconsistencies in the case of prosecution starting from the seizure and taking of sample. They are:-

- (i) Accused were not taken to the Magistrate or Gazetted officer for the purpose of search;
- (ii) Sampling was not done as per the Standing Order 1 of 1989;
- (iii) CDR Sl.Nos.457, 462, 464 and 467 show that A1 and A2 were in



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the same place. When they were in the same place and travelling in the same car, what is the need for talking in cellphone between them.

(iv) CDR Sl.No.492 shows that the accused were in Nellore at 20.06.56 hrs, but respondent claimed that they were arrested at 21.00 hrs at Karanodai Toll Plaza, which is practically not possible.

(v) There is no material available to show that the petitioner had contact with Jog @ Bhagat. The call details provided by the respondent will not prove that he travelled along with A1. Respondent has not given details of CDR till 24.00 hrs on 23.10.2019 for the reason that it will go against the case of the respondent.

5. Learned counsel for the petitioner reiterated that the respondent has not properly classified, carefully weighed and sampled on the spot of seizure and violated the rules stated in sub section 2(1) of Section 2 of General Procedure for Sampling and Storage etc., of Standing Order 1 of 1989. In this connection, he relied on

5(i) the judgments of Hon'ble Supreme Court in *Noor Aga ..vs.. State of Punjab* reported in (2008) 16 SCC 417 for the proposition that the



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guidelines in the Standing Order cannot be blatantly flouted and substantial compliance must be insisted upon, so that sanctity of physical evidence remains intact. It is observed in this judgment as follows:-

“124. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

5(ii) For the same proposition, he also relied on the judgment of this Court in Crl.O.P.No.27632 of 2022, wherein it is observed as follows:-



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“..... Here is noncompliance of the procedure of sampling provided under the Standing Order which has statutory force and therefore, the petitioner may not be held guilty after the trial. Further, there is no prior criminal history of the petitioner, which may compel this Court to take the view that the petitioner will commit further offence after being enlarged on bail. Therefore, the petitioner satisfied this court with regards to twin conditions as contemplated under Section 37 of NDPS Act. Hence, this Court is inclined to grant bail to the petitioner.”

6. He also relied on the following judgments for the same proposition:-

(i) Criminal Miscellaneous Bail Application No.9660 of 2021 (***Om Prakash Verma .. State of U.P.***), wherein Allahabad High Court it is held as follows:-



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“11. The Apex Court in case of [Noor Aga v. State of Punjab](#)², has held in paragraphs 123, 124 and 125 that the standing order in dispute and other guidelines issued by the authority having legal sanction are required to be complied by the arresting authorities. For ready reference the aforesaid paragraphs are quoted herein below:-

"(123) Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-a-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the sub ordinate authorities to comply therewith.



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(124)

(125)

12. The Apex Court in the *Case of Union of India vs. Shiv Shankar Keshari*⁵, has held that the court while considering the application for bail with reference to *Section 37* of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.



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13. Considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of [Union of India vs. Shiv Shankar Keshari](#) (supra) larger mandate of [Article 21](#) of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.”

(ii) In **MCRC No.19405 of 2022 (Navneet Jat ..vs.. The State of**



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Madhyapradesh), the Hon'ble Madhya Pradesh High Court observed as follows:-

*“The Apex Court in **Noor Aga (supra)** has held that standing order 01/1989 is obligatory on the part of subordinate authorities to comply therewith. In the aforesaid case in hand seizure officer while taking samples has not followed the aforesaid standing orders. In both these cases Lucknow Bench of Allahbad High Court and High Court of Judicature For Rajasthan At Jodhpur had granted bail to the applicant.”*

(iii) In Bail Application No.3233 of 2022 (***Laxman Thakur ..vs.. State (Govt. of NCT of Delhi)***), the Hon'ble High Court of Delhi held as follows:-

“8. I am of the view that as mandated by the Hon'ble Supreme Court in judgment of 'Union of India vs. Bal Mukund & Ors. [(2009) 12 SCC



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161], standing order 1/88 has been opined to be a "requirement of law".

9. *The 3 Bench judgment of Bal Mukund (supra) is binding on this Court.*

10. *Relevant portion of Standing order 1/88 reads as under:*

"2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container."

11. *The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.*



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12. *I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable.”*

7. Learned counsel for the petitioner also submitted that the statement under Section 67 of NDPS Act is not admissible in evidence. In support of his submission, he relied on the judgment of Bombay High Court in “**Abdul Mohammed Shaikh ..vs.. Union of India and another**”, wherein the Hon'ble High Court of Bombay, held as follows:-

*“16. In the light of the observation of the Apex Court in the case of **Tofan Singh ..vs.. State of Tamil Nadu (supra)** the submissions of learned*



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*counsel for the respondent cannot be accepted. In the case of **Muhammed Asarudheen Vs. State of Kerala** decided by High Court of Kerala vide order dated 14.01.2021, it was observed that the accused had made repeated applications for bail. The contention was raised that Section 50 was not complied and the statement under Section 67 is not admissible in evidence. The Kerala High Court has observed that the confessional statement can be used as corroborative piece of evidence, provided that there are other materials available. The facts of this case indicate that there was recovery of contraband. There is no other cogent material to corroborate statement under Section 67 of NDPS Act in the present case. The observation that confession statement can be used as corroborative piece of evidence is contrary to ratio of the aforesaid decision and well established*



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*principles of law. In the decision of the Gauhati High Court in the case of **Senaul Sekh Vs. Union of India** it was observed that investigation prima facie established the involvement of the accused in hatching of conspiracy and commission of trafficking drugs and presumption can be drawn against the accused and rigor of Section 37 of NDPS Act will come into play. The NCB had contended that case is not solely based on statement of other accused under Section 67 of NDPS Act. The order in the case of **Shahjad Vs. State of Uttar Pradesh** in Misc. Bail Application No.46296 of 2020 refers to the recovery from joint possession of the accused. On the facts it cannot be relied upon. Although, the decision in the case of **Tofan Singh** was relied upon, Court observed that the said decision relates to statement under Section 67 of the NDPS Act which cannot be used*



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*as confessional statement during trial. In **Satpal Singh Vs. State of Punjab** the Apex Court has observed that the High Court has not taken into consideration the effect of Section 37 of NDPS Act. In the case of **Mandeep Singh Vs. State of Punjab (supra)** decided by High Court of Punjab and Haryana it was observed that, although there was no recovery from accused, his name cropped up during investigation being part of international gang getting contraband from smugglers across the border and distributing it in India. The other decision are relating to nature of evidence, charge of conspiracy and embargo of Section 37 of NDPS Act.”*

8. It is the further submission of the learned counsel for the petitioner that the respondent failed to send 76 samples, as per the guidelines prescribed in Standing Order 1 of 1989. Therefore, the sampling



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procedure was not proper, entitling the petitioner for the grant of bail. He also submitted that the petitioner is an agriculturist earning a meager income of Rs.5,000/- per month and he is in judicial custody for more than 3½ years. The Hon'ble Apex Court has granted bail in the following cases taking into consideration the long time incarceration.

ORDERS OF THE HON'BLE APEX COURT CONSIDERING LONG TIME OF INCARCERATION		
Date	SLP (Crl) No.	Period of Incarceration
07.02.2020	8823 of 2019	18 months
23.09.2021	7085 of 2021	40 months
01.08.2022	3961 of 2022	29 months
01.08.2022	5769 of 2022	14 months
29.03.2023	1367 of 2023	33 months



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Thus, he prayed for grant of bail.

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9. In response, learned Special Public Prosecutor submitted that apart from the statement of accused given under Section 67 of NDPS Act, independent witnesses have given statements with regard to the seizure of ganja from the possession of A1 and A2 in this case. There are call detail records (CDR) to show that the petitioner and Jog @ Bhagat had conversed with each other prior to the commencement of their travel with ganja. Petitioner alone had hired A1. Giving the benefit of doubt in favour of A1, he was released on bail. The same kind of benefit of doubt cannot be extended to the petitioner for the reason that he is the main person, who dealt with Jog @ Bhagat for transporting ganja from Vizag to Chennai. Every effort was taken to trace Jog @ Bhagat, but his whereabouts is not found so far. The CDR analysis of the mobile number 89851 71870 used by Vanthala Murali revealed that he was in contact with Jog @ Bhagat in his mobile numbers 91787 01678 and 87632 00714. They were in contact between 22.10.2019 and 23.10.2019. However, petitioner did not reveal about this mobile number in his statement. He intentionally suppressed this



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number.

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10. In response to the submission of the learned counsel for the petitioner that what is the need of A1 and A2 to converse through cellphone when it is alleged that they travelled in the same vehicle, learned Special Public Prosecutor submitted that call record details shows that A1 and A2 had cellphone conversations between 01hours 29minutes 45seconds to 02hours 02minutes 06seconds on 23.10.2019. Thereafter, there is no cellphone conversation between them. The tower locations from CDR starting from 01.14.55 on 23.10.2019 to 20.06.56 on 23.10.2019 shows that they started at G.K.Veedhi, Vizag and were found near Thikkavaram, Nellore at 20.06.56. As per the tower locations, A2 was travelling from Vizag to Chennai via Rajamundry, Eluru, Ongole and Nellore and they were arrested at 22hours at Karanodai Toll Plaza, Chennai. Therefore, the submission of the learned counsel for the petitioner that accused could not have been arrested on the date and time specified in the complaint is not correct. In support of his submission, learned Special Public Prosecutor produced the call detail records (CDR), tower locations with map in the



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form of written submissions. Learned Special Public Prosecutor further submitted that even in the absence of statement of accused under Section 67 of NDPS Act, when there are other incriminating materials available like, seizure of contraband from the possession of the accused and cellphone conversations before the procurement and during the transit, between the accused, it is enough to draw the presumption that the accused had involved in the illegal procurement and transportation of ganja. Thus, he seeks for dismissal of bail petition.

11. Considered the rival submissions and perused the records.

12. The main grounds, on which the learned counsel for the petitioner challenges the prosecution case and prays for bail, are that,

1. seizure and sampling procedure were not done in accordance with law;
2. The alleged cellphone conversations among the accused is not a conclusive proof to prove that the accused procured ganja and transported ganja.



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3. There are material contradictions with regard to the timing of cellphone conversations of the accused and also the date and time of arrest of the accused etc.,
4. Statement under Section 67 of NDPS Act is not admissible in evidence.

13. From the complaint allegations and the submissions of the learned Special Public Prosecutor appearing for the respondent, the case of the prosecution is that on the prior information, NCB officials along with witnesses S.Kamal and T.Lokesh Babu mounted surveillance at Karanodai Toll Plaza, Chennai. At around 22 hrs on 23.10.2019, NCB team identified white colour Toyota Corolla vehicle bearing registration No. AP-09-AS-8191. The NCB officials approached the car and introduced themselves and witnesses and asked about the identity of the persons in the car and they revealed their name as Rama Siva and Vanthala Murali. They were also informed about the information received that they are in possession of ganja. Accused said to have admitted having possession of 76 pockets of ganja in the dickey of the car and produced them. Small quantity of ganja in



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all the 76 pockets were tested with Drug Detection Kit and tested positive with Marijuana (ganja). Since all the 76 pockets contained brownish green colour leaf with similar in character, they were collected in eight numbers of plastic gunny bags and marked as P-1 to P-8 and thereafter, two samples of 25 grams each from P-1 to P-8 were collected, sealed as per routine procedure. From the materials produced in this case, there is prima facie evidence available to show that 76 pockets of ganja weighing 187.300Kg were recovered from the possession of A1 and A2 in a car bearing registration No.AP-09-AS-8191. Petitioner has not challenged the statement of independent witnesses with regard to the seizure of ganja and sampling procedure done in the presence of the accused, NCB team and the witnesses. Thus, there is prima facie material available that the ganja weighing 187.300Kg was seized from A1 and A2.

14. With regard to the challenge made to the sampling procedure, Section II of General Procedure for Sampling, Storage etc., of Standing Order 1 of 1989 dated 13.06.1989 reads as follows:-

“ 2.1 All drugs shall be properly classified,



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carefully weighed and sampled on the spot of seizure.

2.2 All the Packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in



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each is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicated shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together and of identical sized and weight, bearing identical markings and the contents of each package given identical results on colour test



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by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja less than 5 packages/containers remain, no punching would be necessary and no sample need be drawn.

2.7 If such remainder is 5 or more in the case of the other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such



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remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensure that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

15. As per Guideline 2.3 of General Procedure for Sampling, Storage etc., of Standing Order 1 of 1989, the quantity of the sample for chemical test shall not be less than 5 gram in respect of all narcotic drugs and psychotropic substances except in the case of opium, ganja and charas, where the quantity of 24 gram in each is required for chemical test. It also reads that the seized drug in the packages/containers shall be well mixed to make it homogeneous and representative before the sample is drawn. As per Guideline 2.5, when the packages/containers seized are of identical sized and weight, bearing identical markings and the contents of each package



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given identical results on the colour test by the Drug Identification Kit, conclusively indicating that the packages are identical in all aspects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and charas, where it may be bunched in lots of 40 packages/containers and one sample in duplicate drawn.

16. The term used is “may be carefully bunched in ten packages/containers except in the case of ganja and charas, where it may be bunched in lots of 40 packages/containers”. Therefore, it is not mandatory. The complaint reads that since the seized 76 pockets of ganja were similar in all aspects, they were collected and transferred into eight numbers of gunny bags and marked as P-1 to P-8. Thus, this Court is of the view that the guidelines issued in General Procedure for Sampling, Storage etc., of Standing Order 1 of 1989 with regard to bunching and taking samples is substantially complied with.

17. Coming to the submission of the learned counsel for the



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petitioner that the alleged cellphone conversations among the accused would not conclusively establish the illegal procurement and transportation of ganja. As of now, the call detail records (CDR) produced by the respondent and the written submission in support of tower locations and travel route, prima facie establish the fact that there was cellphone conversations between this petitioner and Jog @ Bhagat on 22.10.2019 and 23.10.2019 prior to the procurement of ganja and during the transportation of ganja. There were also cellphone conversations between A1 and A2 between 01.29.45hrs to 02.02.06hrs on 23.10.2019 and thereafter, there was no cellphone conversation between them for the reason that they travelled in the same car and get caught at Chennai Karanodai Toll Plaza at 22.00hrs on 23.10.2019.

18. One more submission of the learned counsel for the petitioner is that the petitioner had nearly undergone 1/4th of the sentence provided for the offence for which he has been prosecuted. Drawing reference to Section 29 of NDPS Act and Section 116 of IPC, he prayed that petitioner may be released on bail.



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19. Offence under Section 20(b)(ii)(c) of NDPS Act is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

20. Offence under Section 25 of NDPS Act is punishable with the punishment provided for the offence.

21. Offence under Section 28 of NDPS Act is punishable with the punishment provided for the offence.

22. Offence under Section 29 of NDPS Act is punishable with the punishment provided for the offence.

23. What is said under Section 29 of NDPS Act is that whoever



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abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of IPC, be punishable with imprisonment provided for the offence.

24. This Section excludes the operation of Section 116 of IPC in a case for abetment criminal conspiracy, by a non-obstant clause ie., “notwithstanding anything contained in Section 116 of IPC, the offence be punished with imprisonment provided for the offence.” In the said circumstances, this Court is of the view that the petitioner cannot seek to invoke Section 116 of IPC for seeking bail on the ground that he had undergone 1/4th of the sentence. Even otherwise, petitioner had not undergone 1/4th of the sentence provided under the Act.

25. In view of the finding that the guidelines in Standing Order 1 of 1989 is substantially complied with in this case, that there are incriminating materials other than the statements under Section 67 of NDPS Act are



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available to implicate this petitioner for illegal transportation of commercial quantity of ganja along with A1. From the prosecution case, it is evident that the petitioner is the one who was actually involved in dealing with the supplier Jog @ Bhagat, hiring of A1 for illegal transportation of ganja. This Court is of the view that the judgments relied by the learned counsel for the petitioner, in the facts and circumstances of this case, are not useful to him. On the other hand, the materials available in this case stand against the accused to believe that he along with other accused committed the offences alleged against him in the complaint. Thus, this Court cannot form an opinion that the petitioner has not committed the offence alleged against him in the complaint and that he would not commit such an offence if he is released on bail. The materials available against him are enough to frame charges against him under the appropriate provisions of NDPS Act, and a trial. Petitioner has not satisfied the twin conditions under Section 37 of NDPS Act for the grant of bail. Non-compliance of procedure under Section 50 of NDPS Act is a matter for trial. Jog @ Bhagat can be added as an accused under Section 319 Cr.P.C even during trial.



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26. For the reasons stated above, this Court is not inclined to grant bail to the petitioner.

27. In this view of the matter, this Criminal Original Petition is dismissed.

mra

04.08.2023

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The I Additional Judge,
Special Court for Exclusive Trial of Cases under NDPS Act
Chennai.
2. The Intelligence Officer
Narcotic Control Bureau
Chennai Zonal Unit
Ayapakkam
Ambattur, Chennai – 600 077.
(R.R.No.15 of 2019)
3. The Public Prosecutor
Madras High Court
Chennai.

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G.CHANDRASEKHARAN,J.

mra

order in
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04.08.2023



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