



Crl.O.P.No.12890 of 2023

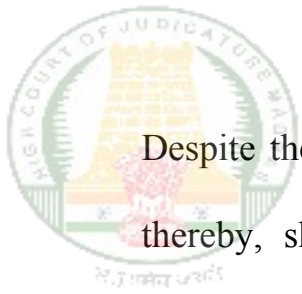
A.D.JAGADISH CHANDIRA, J.

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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 01.04.2022 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.

3. The learned counsel for the petitioner would submit that this is the second bail application. The earlier application for bail was dismissed on 18.04.2023 and this Court had directed the Trial Court to complete the trial within a period of three months from the date of receipt of a copy of that order.



Despite the completion of three months, the trial has not been completed and thereby, she would seek bail. She would submit that the petitioner is an innocent person and he has been falsely implicated in this case. She would further submit that the petitioner was only a driver of the car and no steps have taken to find out the owner of the car. She also submitted that the petitioner is in custody from 14.02.2023, hence, she prays for grant of bail to the petitioner.

4. The respondent has filed a counter on earlier occasion. The learned Government Advocate (Crl.side) for the respondent police would submit that it is a case where the petitioner was arrested while driving the car and the contraband was recovered from the car. He would further submit that this Court had already taken into consideration that the contraband was recovered from the car and the petitioner and another person were available in the car. This Court, taking into consideration of the judgment of Hon'ble Apex Court in the case of ***Union of India through Narcotics Control Bureau, Lucknow vs. Md.Nawaz Khan*** reported in ***2021 10 SCC 100***, had found 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 and dismissed the earlier application. He would also submit that in this case, there are totally 8 witnesses and the trial has commenced and the L.W.1 has been examined and that the petitioner has been cross-examined in part and only at



request of the petitioner, the trial has been adjourned to 23.08.2023 for further cross-examination. He would submit that the respondent is not responsible for delaying the trial and there is no change of circumstances and thereby, he would seek for dismissal of the bail petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the respondent police and perused the materials available on record.

6. This Court, taking into consideration of the fact that the contraband was recovered from the car and the petitioner was driver of the car and found that the petitioner has not complied with the conditions required under Section 37 of NDPS Act for grant of bail, had dismissed the earlier bail application. This Court does not find any change of circumstances.

7. Accordingly, this Criminal Original Petition is dismissed. However, the Trial Judge is directed to comply with the earlier directions issued by this Court strictly.

18.08.2023

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