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Crl.O.P.Nos.13543, 12968 and 13542 of 2023

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G.CHANDRASEKHARAN. J.

The petitioners namely A.Jakir Hussain, Kundala Seenu and Mohammed Riyaz, who were arrested and remanded to judicial custody on 17.03.2023 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 29(1) and 25 NDPS Act in Crime No.98 of 2023 on the file of the respondent police, seek bail.

2. Learned counsel for the petitioners submitted that, petitioners are falsely implicated in this case in Crime No.98 of 2023 for the offences under Sections 8(c), 20(b)(ii)(C), 29(1) and 25 NDPS Act. He further submitted that, contraband said to have been seized on 17.03.2023, was belatedly produced before the Court only on 28.03.2023. There is a possibility to tamper the contraband. There is no signature obtained in the seizure mahazer from the accused. The respondent police has not complied with the mandatory provisions under Section 50 of NDPS Act. Petitioners are in judicial custody from 17.03.2023. Thus, he prays for grant of bail to the petitioners.



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3. Learned Additional Public Prosecutor, opposes this bail petition, on the ground that, petitioners were found with commercial quantity of ganja weighing 52 kgs jointly. They were caught with contraband. The contraband was immediately produced before the learned Judicial Magistrate No.1, Tambaram on 17.03.2023. Since this case involves possession of commercial quantity of ganja, petitioners have to satisfy the twin conditions under Section 37 of NDPS Act. However, petitioners have not satisfied the twin condition. Therefore, he prays for dismissal of this bail petition.

4. Considered the submissions and perused the records.

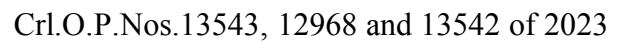
5. The first information report allegations show that, on 17.03.2023, defacto complainant received a secret information about illegal transportation of ganja. He, along with the police party mounted surveillance near Vels College checkpoint. At about 2.30 p.m., a car bearing No.AP 05 AC 4447 had come towards Pallavaram. Defacto complainant stopped the car and found 4 occupants in the car. After introducing themselves, they came to know that the four occupants are, Mohammed Riyaz, Al Ameen, Jagir Hussain and Kundala Seenu.



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After following necessary procedure, defacto complainant found that, the accused were in possession of ganja and informed about their right to be searched in presence of the Judicial Magistrate or gazetted officer. The accused preferred search by defacto complainant. Accordingly, search was conducted. The accused admitted that they have procured ganja and 22 kgs belongs to Al Ameen and 10 kgs belongs to Mohammed Riyaz, 10 kgs belongs to Jakir Hussain and 10 kgs belong to Kundala Seenu. Samples were taken after following the necessary procedure. Accused were arrested and case was registered. It is seen from the first information report that, accused were found in possession of commercial quantity of ganja weighing 52 kgs.

5.1. With regard to the submission of the learned counsel for the petitioners that, the ganja was not immediately produced before the Court, this Court summoned Form 95, seizure mahazar concerned in Crime No.98 of 2023 and requisition for sending sample for analysis. When copy of Form 95 is perused, it is evident that, the contraband was infact produced before the learned Magistrate and he directed that contraband to be produced during the Court working hours. Therefore, there is a prima-facie evident available to show that,



5.2. With regard to the submission of the learned counsel for the petitioners that, the signature of the accused is not obtained in the mahazar and that procedure under Section 57 of NDPS Act is not followed, this Court is of the view that these are the matters for consideration and only during the trial.

6. In view of the seizure of commercial quantity of ganja from the petitioners, this Court is of the view that, petitioners have not satisfied the twin conditions under Section 37 of NDPS Act. In such circumstances, this Court is not inclined to grant bail to the petitioners.



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7. Learned Trial Judge is directed to expedite the trial and dispose the case as early as possible. Accordingly, this Criminal Original Petition is dismissed with the above direction.

17.08.2023

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