



Crl.O.P.No.17688 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner herein seeks bail in R.R.No.7 of 2023 registered by the respondent Police for the offence under Sections 8(c) and 29(1) of NDPS Act.

2. The learned counsel for the petitioner stated that he had been taken into judicial custody from 06.03.2023.

3. The facts of the case are that the 1st accused, Shri Anil Balkisandas Goridia had come over to Chennai from Ethiopia by international flight on 05.03.2023. He was in possession of light pale yellow colour powdery substance in polythene covers totally weighing 8.098 kgs. The respondent suspected that product was heroin. It was also concealed in a trolley suitcase which was seized from 1st accused's possession. The statement under Section 67 of NDPS Act, 1985 was also recorded. Under the statement, the 1st accused had stated that he has to deliver this particular contraband to one Shri Jhon Hotlon at OPO Hotel, Alpine Tree, A-65, Mahipalpur, NH-08, Near IGI Airport, new Delhi. Thereafter, the respondent



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prepared to lay a trap. They gave information about the arrival of the 1st accused. The petitioner who had been arrayed as the 2nd accused, had come over from Lucknow to New Delhi to the said hotel. He had tried to reserve a room in the hotel in the name of the 1st accused. But that was not accepted by the hotel without documents relating to identity.

4. One John Hotlon appears to be the guiding person for both 1st and 2nd accused. The petitioner was sent whatsapp messages informing that the 1st accused had actually arrived at Chennai. On receiving that particular information, the present petitioner had once again gone over to the receptionist at OPO Hotel to seek reservation of a room for the 1st accused. At that time, he had been intercepted and taken into custody. He had been arrayed as the 2nd accused. It should be noted that the product seized was actually heroin.

5. Learned counsel for the petitioner placed relevance on the Judgment delivered by a learned Single Judge in the case of ***K.Ramesh Vs. The Intelligence Officer & others*** in **Crl.A.No.1 and 10 of 2016** dated 23.07.2019. The first distinguishing factor in that case is that the product



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which had been seized was suspected to be heroin. On receipt of the forensic report of the sample, it was found to be ApProzalam and caffeine and phenolphthalein which were diluted. The second distinguishing factor is that, that particular judgment was rendered after trial and not to examine whether the accused should be released on bail or not. The learned Judge during the course of the appeal had entered into a long discussion about what preparation of a crime would mean actually.

6. These are all aspects which are not relevant to the facts of the case. Every preparation is independent to the other and every accused will have an independent manner of preparation of an offence. Whether there is intention or preparation and whether there is execution, would be different in respect of the facts and circumstances of the case.

7. Insofar as the present stage of the case is concerned, it is to consider whether bail could be granted or not. The fact the petitioner had come over from Lucknow to New Delhi had been established. Further the flight ticket had been booked for the 1st accused from Chennai to New Delhi and that the petitioner herein had made arrangements for the same has also



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been established. This is a matter to be further established during the course of trial. The fact that the petitioner has made serious attempts to book a room in the said hotel at New Delhi is again established and will have to be further established during the course of trial. The entire case is at preliminary stage.

8. There is yet one another fact, namely the individual named John Hotlon, who the respondent should necessarily have to secure. That would require further investigation in the entire issue.

9. The coincidences are very strange. The 1st accused had intention to stay at OPO Hotel at New Delhi. The petitioner with some coincidence gone to OPO Hotel having travelled from Lucknow to New Delhi to that particular hotel. He will have to explain as to why, of all the places in New Delhi, he went over to this hotel and how he knew the name of the 1st accused and why he was so desperate to book a room in the name of the 1st accused. It is also not known as to why the petitioner had made arrangement for the flight ticket from Chennai to New Delhi for the 1st accused. Investigation is still at nascent stage. All these aspects will have to be examined. In this case, the contraband is certainly heroin, weighing 8.098 kgs, which is a commercial quantity.



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10. Learned counsel for the petitioner also put an alternative argument that it is only an attempt, therefore the offence under Section 37 of NDPS Act would not apply, since the maximum punishment would be only 5 years and that Section 30 of NDPS Act would come into play and therefore, exception under Section 37 of NDPS could not be examined by this Court. Once there is a common intention, it is not just merely an attempt but equal participation of the offence by both accused persons. That is a matter which will have to be examined only at the time of filing the charge sheet. Even at that stage, charges could also be altered. Quite apart from an attempt on the present petitioner, equal intention to bring the contraband to New Delhi has to be established. Therefore, the judgment referred though quite enlightening insofar as academic knowledge is concerned, is irrelevant to the facts of this case.

11. With the above observation, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original petition is dismissed. .

16.10.2023

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C.V.KARTHIKEYAN, J.



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