



Crl.O.P.No.17843 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner herein seeks bail in Spl.C.C.No.115 of 2022 registered by the respondent Police for the offence under Sections 8(c), 20(b)(ii)(c), 25, 29(1) NDPS Act r/w 468, 471, 420 r/w 34 IPC.

2. The petitioner is A1 in the said Special Calendar Case. Before going into any further discussion, it has to be noted that A2 is still absconding and Non-Bailable Warrant is pending against him. That fact also implies that the trial can never progress. It is also indicating of the possibility that, the petitioner might also abscond, which would bring the entire trial to stand still.

3. The case of the prosecution is that A3 and A4 were intercepted by the respondent police near Karur to Salem Road, while travelling in Tavera Car bearing Registration No.KL 7 AT 6464 and the respondent police found 6 white colour gunny bags, totally weighing 240 kgs of ganja. The allegation against this petitioner is that, he had given his mobile phone to A3 and A4, which was in their possession. The contraband had been seized and it has been forwarded to the Magistrate.



CrI.O.P.No.17843 of 2023

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4. Learned Senior counsel for the petitioner had placed reliance on the string of judgments to speak about Section 52 (A) of NDPS Act, which not only deals about seizure, but more importantly speaks about drawing of samples from the seized contraband and taking that sample to the laboratory for chemical analysis. For that, a procedure for the drawal of sample had been laid down. It had been observed by the learned Senior counsel that such sample should be drawn on an application made to the Magistrate and such samples should be taken only on orders of that application by the Magistrate and only after getting permission from the Magistrate, should it be sent for laboratory examination. The theory behind this is very simple. The police can seize contraband and send some other material to the laboratory for testing and claim that the material which had been forwarded to the laboratory were the contrabands which had been seized from the accused.

5. In the instant case, the first information report speaks about seizure. The seizure had been forwarded to the Magistrate. Thereafter, final report had been filed. No materials have been produced without the permission of the Magistrate samples had been drawn and sent for examination.



Crl.O.P.No.17843 of 2023

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6. The Judgment relied on by the learned Senior Counsel primarily dealt with drawing of samples and with destruction of materials which had been seized subsequent to conclusion of trial.

7. In the instant case trial is actually not in progress and it has come to stand still. The allegation that the contraband that had been seized has not been denied and the fact that the accused were in possession of mobile phones has not been denied and the allegation that it was the petitioner who supplied the mobile phone has not been questioned. The fact is that A2 had jumped bail and is absconding and NBW has been issued.

8. In the judgement relied by the learned counsel in ***Union of India Vs. Mohanlal & Another*** in Crl.Appeal.No.652 of 2012 dated 28.01.2016, the Hon'ble Supreme Court of India had primarily focused on the destruction of contraband after completion of trial process and the procedure in which samples have to be taken after the seizure. It has been stated that, on such application made to the Magistrate, under the orders of the Magistrate alone, samples from the particular seized contraband which is under custody of the Court should be sent for examination.



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Crl.O.P.No.17843 of 2023

9. That is not the case here.

10. The judgments referred are not applicable to the facts of this case.

11. The learned Senior counsel had forwarded a series of judgments of Hon'ble High Courts granting bail.

12. However, there is no allegation that samples had been taken without the permission of the Magistrate and independently by the respondent.

13. I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

16.10.2023

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Crl.O.P.No.17843 of 2023

C.V.KARTHIKEYAN, J.

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Crl.O.P.No.17843 of 2023

16.10.2023