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Crl.O.P.No.21360 of 2023

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A.D.JAGADISH CHANDIRA, J.

The Criminal Original Petition has been filed by the petitioner seeking to enlarge her on bail in C.C.No.224 of 2022 pending trial on the file of the Principal Special Court under EC & NDPS Act Cases, Chennai, in connection with R.R.No.40 of 2021 registered on the file of the respondent.

2. The case of the prosecution is that on 08.12.2021, at about 23.00 hours, the petitioner holding Indian Passport No.U2971217 issued at Tiruchirappalli dated 18.11.2020 had cleared her immigration and was proceeding to the security hold area in the departure terminal of the Anna International Airport to travel abroad with her one hand baggage. On receipt of the specific information, the petitioner was intercepted and called back to the customs counter by the Customs Officer for thorough examination of her baggage and search of her person in the presence of witnesses.



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3. Before examination of baggage and search of person, provisions under Section 50 of NDPS Act and Section 102 of Customs Act, 1962 were explained to the petitioner. During enquiry, the petitioner became nervous and on persistent questioning by officials, the petitioner had accepted to concealing narcotics wrapped in adhesive tapes in her rectum and she had agreed to voluntarily eject the same. Thereafter, the petitioner/accused was taken to the toilet along with the witnesses and she voluntarily ejected two bundles wrapped with adhesive tapes and after washing it, handed over the same to the officer in the presence of the independent witnesses. The said bundles were cut open and found to contain 99 grams of Methamphetamine Hydrochloride. Thereby, the petitioner was arrested on 09.12.2021 and remanded to judicial custody on the same day.

4. The respondent had filed the case in R.R.No.40 of 2021 initially for the offences punishable under Sections 9(A) r/w 23, 25A, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and after completion of investigation, the complaint was filed for the offences punishable under Sections 8(c) r/w 22(C), 23(C), 28 and 29 of NDPS Act, 1985. Thereafter, the case has been taken up for trial in C.C.No.224 of 2022, on the file of the Principal Special Court under EC & NDPS Act



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5. Mr.T.Gowthaman, learned Senior Counsel appearing for the petitioner submitted that the petitioner is an innocent person and she has been falsely being implicated in this case. He further submitted that this is the third application for bail filed by the petitioner before this Court and her earlier bail application filed in Crl.O.P.Nos.8183 of 2022 and 1979 of 2023 pending investigation was dismissed by this Court on 20.04.2022 and 14.03.2023 respectively. He further submitted that only after the petitioner came into the possession of the complaint, she could find that materials available to substantiate her case to satisfy the twin conditions required under Section 37 of NDPS Act for grant of bail, which were not pleaded or placed before this Court during the hearing of the earlier petition.

6. Learned counsel for the petitioner further submitted that perusal of complaint shows that there is a violation of Sections 50, 51 and 52(A) of NDPS Act and the prosecution has not complied with the said provisions and thereby, vitiating the trial. He also submitted that the Hon'ble Supreme Court has viewed infraction of Section 52(A) seriously and in several cases has acquitted the accused and since there are violation of mandatory



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conditions, there is every possibility of the petitioner being acquitted. He further submitted that the passport of the petitioner is also seized by the respondent and therefore there is no possibility of the petitioner to flee away from the country. He further submitted that the petitioner is languishing in jail for almost two years from 09.12.2021, whereas, there is no progress in the trial. Therefore, on account of the long incarceration the petitioner is entitled to bail.

7. In support of his contention, the learned Senior Counsel for the petitioner further relied on the judgment of the Hon'ble Apex Court in the case of *State of Rajasthan vs. Parmanand & another* reported in (2014) 5 SCC 345.

8. Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor appearing on behalf of the respondent submitted that it is the case where the petitioner attempted to smuggle 99 grams of Methamphetamine Hydrochloride "Commercial Quantity", by concealing it in her rectum and on the same day, at the same time, the petitioner's son and her relatives were also arrested for adopting the same method and attempting to smuggle 99 grams of Methamphetamine Hydrochloride each, by concealing it in



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their rectum. He further submitted that separate complaints have been filed against them and those cases are also pending trial. He further submitted that the attempt was made in a well organized manner to smuggle the contraband, which is a commercial quantity, out of the country. He also submitted that the issue of whether there is a violation of Section 52(A) of NDPS Act is there or not, is a matter of evidence and the decision of that issue can be taken only at the time of trial, which can be adjudicated during the course of trial by examination of witnesses.

9. Learned Special Public Prosecutor submitted that this Court, taking into consideration the fact that the petitioner has not satisfied the twin conditions required under Section 37 of NDPS Act, had dismissed the earlier bail application. He further reiterated that it is the case where the petitioner and his family members had attempted to smuggle contraband, by concealing it in their rectum and it is clearly serious in nature. Further, in this case, the prosecution is not responsible for the delay and the accused is delaying the trial by not engaging a counsel to defend his case. Hence, he opposed for grant of bail to the petitioner.

10. Heard the learned Senior Counsel for the petitioner and the



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learned Special Public Prosecutor for the respondent and perused the entire materials available on record.

11. It is the case where the petitioner, along with her relatives had attempted to smuggle commercial quantity (99 grams) of Methamphetamine Hydrochloride, by concealing it in their rectum. Considering the above facts of the case, this Court is of the opinion that violation of Sections 50, 51 and 52(A) of NDPS Act is the matter to be decided during the course of trial by examining the witnesses.

12. Taking into consideration the facts and circumstances of the case and also considering the manner and the mode in which the petitioner has attempted to smuggle Methamphetamine Hydrochloride, this Court is of the view that the crime is of serious nature and this Court does not seem to find any reasonable grounds for believing that the petitioner is not guilty of such offense. Therefore, this Court is not inclined to grant bail to the petitioner.

13. At this juncture, it is represented by the learned Senior Counsel for the petitioner that considering the long incarceration suffered by the petitioner, a direction may be issued to the trial Court to complete the trial



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as expeditiously as possible.

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14. Accordingly, this Criminal Original Petition stands dismissed. However, the learned Judge, Principal Special Court under EC & NDPS Act Cases, Chennai, is directed to proceed with the Case and dispose of the Case within a reasonable period of six (6) months from the date of receipt of the copy of this order.

21.11.2023

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