Crl.O.P.Nos.20782 & 7061 of 2023

C.V.KARTHIKEYAN,J.

The petitioner/A1 in R.R.No.01 of 2023, registered by the respondent, Directorate of Revenue Intelligence, Chennai Zonal Unit, Chennai, under Sections 20, 23, 28 & 29 of NDPS Act, has filed Crl.O.P.No.7061 of 2023 and the petitioner/A2, who incidentally is the son-in-law of A1, has filed Crl.O.P.No.20782 of 2023 in the same matter. Both seek bail. A1 has been in custody from 27.01.2023, when he had appeared before the respondent in response to a summon issued on 26.01.2023. A2 has also been in custody from 27.01.2023.

2.The entire issue relates to detection of 56.05 kgs of Marijuana, from, of all articles, water sinks in the Airport in Chennai. Naturally the quantity being commercial in nature, both the petitioners will have to make out a case under Section 37 of NDPS Act, which envisages twin conditions before the Court can even consider granting bail.

3.The first one is that the Public Prosecutor should be put a notice and sufficient opportunity should be given to the accused to answer to the grounds raised seeking bail and the second condition is that the Court must come to a conclusion or even an opinion that there are reasonable grounds for the accused being acquitted of all charges.

4.So far as the 1st condition is concerned, the learned Special Public Prosecutor for the respondent is present. He has been put a notice and he has also filed his counter. Therefore, that particular aspect has been satisfied. So far as the 2nd condition is concerned, which involves examination of the records to determine whether the Court can come to a conclusion that the petitioners, even if they were to go through the rigour of trial would be finally acquitted and therefore, holding such opinion that the matter could end in acquittal, keeping the accused under incarceration would be prejudicial to their rights of liberty, both the learned counsel had made elaborate submissions putting forth their respective cases asserting that there would be an order of acquittal on conclusion of trial.

5.Even before I examine the arguments advanced by the learned counsels on behalf of the two accused it would be prudent that the facts are reduced.

6.It is stated that two sink basins had been imported from United States of America for which, the 1st accused, Jamaluddin had filed, according to the prosecution a bill of entry on 08.01.2023. The name of the sinks were Azure Bathroom Vanity. The consignor was Bed and Bath Italia.

7.The respondent however, went around examining the two sink basins and when they examined it, they recovered 56.05 kgs of Marijuana/Hydroponic weeds (Cannabis) sealed in polythene packets, deeply concealed under the sink basin which was made of plaster of paris with a false bottom being created in the sink basins.

8.Thereafter, the respondent had undertaken an elaborate investigation to find the details of the consignee and the person who actually placed the order and also the person who facilitated the import of the said sink basins.

9.In the first place, it is very strange matter that just two sink basins were imported all the way from America and it is not known as to who the end user of the two sink basins was and who had put in valuable money for import of two sink basins and not a whole lot of sink basins for further trade in this country. Import of just two sink basins itself is a cause of suspicion that it could have been so imported only with oblique purposes. A detailed examination had actually revealed that the purpose was to create false basins and to conceal 56.05 kgs of Marijuana in the same.

10.In fact since the Marijuana had been imported from USA, I think protocol should also require that this Court continues using the word Marijuana and not the common term ganja, as is normally used in every other case. These are all imported products and probably used for exquisite and exclusive clients. Any way, be that as it may, the investigation had revealed that the consignee was a Company called M/s.Jamal Industries.

11.The 1st accused is Jamaluddin and there is no dispute raised that he is not directly involved with M/s.Jamal Industries. The contention raised by the learned counsel for the 1st accused is that M/s.Jamal Industries at Mangalore was primarily involved in Timber business. It had been stated that the 1st accused is an illiterate person and that he was not aware of the procedures to be involved in import and export of any product but however, he had sufficient knowledge to obtain what can be called an Import and Export Code. This is required to be furnished with its number and the GST number for import of any product. This particular code namely permission to import any product, not just timber and certainly not just bathroom sinks, was in the name of the 1st accused.

12.The learned counsel for the 1st accused had invited me to examine the statement recorded under Section 67 of NDPS Act and claimed that the 1st accused is innocent of the offences. But from a reading of the very first preliminary portion of the statement recorded under Section 67 of NDPS Act, the 1st accused appears to be quite a knowledgeable person and he cannot be categorised as illiterate. It is revealed that he knows the ways of the world. He know how to read and write Hindi, Kannda and he can understand and speak Tulu, Malayalam, Tamil and his statement had also been recorded in English and he has also signed in English and he has not raised any dispute that he was not aware of the nature of the statement recorded. Therefore, the contention that the 1st accused is an illiterate person and not aware of the business world and about import and export is rejected by me. He is very much aware of the procedure for import of articles and that such procedure requires an IEC code, which is an abbreviation of Import and Export Code and that it stands in his name.

13.The explanation given by the learned counsel for the petitioner as to how this particular IEC code came to the hands of the 2nd accused, is that the 2nd accused is the sister's son-in-law of the 1st accused. This draws a very close relationship between the 1st and the 2nd accused. There is yet one other factor. That both the learned counsels for the accused stated at that was that one Fouzan at Dubai, had facilitated the import and quite significantly that Fouzan is also a cousin brother of the 2nd accused. Therefore, there is a strong blood relationship among the 1st accused and the 2nd accused and the actual person at Dubai, who facilitated the import.

14.This chain is very significant as this would be the base to reject the claims of innocence of either A1 or A2, who claim that A2 acted independently of A1 without knowledge or concern of A1. They are both hand in glove with each other only since the 2nd accused had married the daughter of the sister of the 1st accused, but as facts revealed in this business venture also.

15.Among other contentions, the learned counsel for the 1st accused stated that there were three factors this Court should consider.

16.The 1st factor according to the learned counsel is the invoice which stood in the name of M/s.Jamal Industries with address, of all names, Indra Priyadharshini Nagar at Chennai. I am at a loss to understand why that particular name was chosen by the accused herein. That address is a fake address. If they wanted to go around, searching and fixing a fake address they had a variety and thousands of names at their hands but of all the names they had chosen the name Indra Priyadharshini Nagar at Chennai, as the address to be given in the invoice.

17.It is the contention on behalf of the respondent that from the house of A1, during search and seizure, an invoice for 1314 US dollars had been recovered and it is stated that the 1st accused had gone over to the Bank of Baroda on two separate occasions and tried to encash the said US dollars but failed. But later, a third attempt was made by a third individual. Therefore, though the invoice had a fake address the US dollars mentioned in it was available in the house of the 1st accused.

18.The 2nd factor, which the learned counsel for the 1st accused stated was about the statement by the Clearing and Forwarding Agent. His statement had also been recorded under Section 67 of NDPS Act. This particular statement was also read over and the crucial portions were also pointed out.

19.There are also other portions which are quite damaging to the interest of the 1st accused but let me give leverage and benefit to the 1st accused by not going through those particular statements since that had to be established during the course of trial. However, it is stated that the individual/Akilesh Aravind, had stated about a particular Whatsapp number, namely phone number 7085291564 and the learned counsel for the 1st accused stated that the 1st accused was not at all connected with the said number. But however, from that particular number which incidentally stands in the name of a lady at Mizoram, IEC details of the

1st accused had been forwarded to the said Akilesh Aravind. If the 1st accused had no connection whatsoever with either that particular lady from Mizoram or was not aware about this particular number, it defies logic as to how his IEC codes were exchanged to a Clearing and Forwarding Agent through this particular number.

20.It is further pointed out by the respondent, that even though the SIM card stands in the name of that lady at Mizoram, the call details showed that they had emanated from Chennai. The learned counsel for the 1st accused however stated that at that material point of time, the 1st accused was in Mangalore and not at Chennai. But at Chennai, a person had known all details about the 1st accused. Moreover, still more cleverly, while filing the KYC forms, the signatures of the 1st accused were put differently. This could also be interpreted as being a well founded and deep rooted conspiracy to hide the actual persons by deliberately putting an alternate signature. I am not prepared to grant any indulgence to either one of the two accused.

21.It is also stated that there had been a transfer of Rs.1,00,000/- to the said Clearing and Forwarding Agent and they were all done through G-pay and UPI accounts. That aspect is immaterial. The fact is that the IEC code of the 1st accused had been used and it is a matter of trial to determine as to whether it was done with knowledge or without knowledge. I am confident that the learned Trial Judge, would give more than sufficient opportunity, not only to the prosecution to establish the case beyond any reasonable doubt but also afford more than sufficient opportunity to the accused persons to let in their evidence to disprove the case of the prosecution. The materials stair at the face of the accused herein and they are not denied or disputed.

22.The 3rd circumstance is about the KYC particulars of which it had been stated earlier that, the signatures were forged, the addresses were fake and everything was forged. The IEC certificate alone stood in the name of the 1st accused. That is a very significant factor. Explanation by the 1st accused as to how it was used for import of just two bathroom sinks of all products, when the 1st accused was a dealer in timber has to be explained only by the 1st accused and it is certainly not for the prosecution to stand on behalf of the 1st accused and try to give an explanation. This is information exclusively to the knowledge of the 1st accused and he will have to explain as to how the IEC code was used for this particular import.

23.It is also stated that the 1st accused had never contacted the stranger individual, Fouzan at Dubai. But however, it is admitted that he is related to the 2nd accused and it is also admitted that the 2nd accused is related to the 1st accused. As between relations, it is not required that there should be direct telephone calls between them. Any member of the family could be contacted and they can hand over the phone to the actual individual and necessary information can be passed on. Therefore, I would not give any credence to the fact that the 1st accused had never contacted this strange individual Fouzan at Dubai.

24.One further aspect had been stated by the learned counsel for the 2nd accused, namely, about the non-compliance of the requirement under Section 52A of the NDPS Act, which deals with drawing of samples. When any contraband is seized, naturally opportunity would be given to the person whether seizure of his person should be done in the presence of a Gazetted Officer. There had also instances where that offer had been declined. But, in the instant case, it is seizure of two bathroom sinks, and from the two bathroom sinks false seating arrangements were detected and 56.05 kgs of Marijuana had been concealed.

25.It is the specific case of the respondent that after the seizure during the course of investigation, they had produced the seized contraband before the Magistrate in the Customs Court rather than before the jurisdictional Magistrate Court and he had verified whether the seals had been broken or not and thereafter, in his presence, samples had taken. These facts are again a matter of evidence and the Investigating Officer can be called upon to explain the manner in which he had seized the contraband and the manner in which he had taken samples of the contraband. That opportunity would certainly be given to both the accused.

26.The learned counsel for the 1st accused placed reliance on the judgment of the Hon'ble Supreme Court reported in ***2020 13 SCC 447, Sujith Tiwari Vs. the State of Gujarat and Another***, wherein the Hon'ble Supreme Court had taken into consideration the specific condition of the appellant therein. It was found that the appellant, was a young man, aged about 25 years and was a B.Tech Graduate. It was also found that he had been in custody for more than two years. Thereafter, it had been stated in the order that there could be a possibility that he was not aware of the illegal activities of his brother and other crew members.

27.But the facts of the case in hand are different. The 1st accused is certainly not a young person. He is very well versed in business activities. He is already a running timber industry. With aim to import and export, he had already obtained IEC code. He is aware that an IEC code is required for import and export of any item and he has also knowledge that it need not be restricted for the import and export of timber but could also be used for import of all products including bathroom sinks. He has done just that and either with his knowledge or without his knowledge, both the bathroom sinks contained a false underneath with about 56.05 kgs, of all products, Marijuana. Therefore, on facts this particular judgment relied on by the learned counsel for the 1st accused is distinguishable.

28.There was yet another judgment which had been cited by the learned counsel for the 2nd respondent with respect to Section 52A of the NDPS Act. That is reported in ***CDJ 2023 SC 683, Simranjit Singh Vs. State of Punjab.*** It again lays down the law that samples must be drawn in the presence of a Magistrate.

29.In this particular case, the samples were actually taken in the presence of the Magistrate. That is an issue to be tested during the course of trial.

30.Let me not prejudice the case of the 1st and 2nd accused any further by entering into a discussion on further details. At this stage, I hold that there are no reasonable grounds to hold that there is possibility of acquittal after trial. Accordingly, these Criminal Original Petitions stand dismissed.

22.11.2023

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C.V.KARTHIKEYAN,J.

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