



Crl.O.P.No.21936 of 2023

Crl.O.P.No.21936 of 2023

C.V.KARTHIKEYAN, J.

The petitioner is A1 in C.C.No.187 of 2022, now pending before the I Additional Special Judge for NDPS Act Cases at Chennai, seeks bail. Originally, Crime No.46 of 2022 had been registered by the respondent for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 & 29(1) of NDPS Act. The petitioner had been remanded to judicial custody on 11.03.2022.

2.It is the case of the prosecution that on 10.03.2022 at around 20.00 hours, the respondent had received information that ganja would be smuggled from Andhra Pradesh in a black colour Scorpio car bearing Regn.No.TN-02-AA-7475. This particular information, which was received, was forwarded by the Inspector of Police, Gummidipoondi Circle on the same day on 10.03.2022 to the immediate superior officer namely the Assistant Commissioner of Police by around 21.00 hours. The Assistant Commissioner also had made an endorsement that he had received the said communication and he had also specifically endorsed



Crl.O.P.No.21936 of 2023

WEB COPY

that the Inspector of Police, who had received the information had already been permitted over phone to do search and seizure of the named vehicle, whose registration number had been given. This particular direction is now being questioned by the learned counsel for the petitioner claiming that it is not in compliance with under Section 42 of the NDPS Act.

3.According to him, the information must be given to the immediate superior officer. The learned counsel admits that such an information was actually given. The learned counsel states that the permission must be given by the immediate superior officer to proceed further. The learned counsel also admits that the immediate superior officer has also gave such permission to proceed further. The car was then intercepted and the car was then searched, and it was found to contain 230 kgs of ganja.

4.The learned counsel states that since the information had been received at 8.00 o' clock in the night and the search was conducted



Crl.O.P.No.21936 of 2023

WEB COPY

thereafter, that search was illegal. According to him, the search could not have been done without any warrant. He therefore states that it is not compliance with Section 42 of the NDPS Act.

5. One factor which has to be taken into consideration is that P.W.1 has been examined in chief and his cross-examination is under progress before the Trial Court. If any opinion is given by this Court it would only sway the mind of the Court. This Court should be extremely prudent in expressing any opinion on the issues raised. Nothing prevents the petitioner herein from calling for the records relating to the permissions granted and the procedure adopted during search and seizure. After all, the witness is in the witness box and he has also been cross-examined in part. The petitioner appears to indulge in a hit and run operation by filling this bail application before this Court, at this very crucial juncture, instead of cross-examining the witness and continuing with the trial process. Records are available with the Trial Court and they could always be perused to examine whether necessary compliances have been done by the respondent while conducting search and seizure.



Crl.O.P.No.21936 of 2023

WEB COPY

Having not so perused the records and being ignorant of the records, the learned counsel for the petitioner argues in the air and seeks bail.

6.In this connection, the learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2009 AIR SCW 5265 : 2009 CRI.L.J.4299** in the case of **Karnal Singh Vs. State of Haryana**. It is a judgment, which laid down the rule that compliance with under Section 42 of NDPS Act is mandatory.

7.But however, in paragraph No.17 of the very same judgment, the Hon'ble Supreme Court has also stated as follows:

“Whether there is adequate or substantial compliance of Section 42 or not is a question of fact to be decided in each case.(Para 17)”

This would only imply that the records of each and every case will have to be independently examined to see whether there is compliance under Section 42 or not.



Crl.O.P.No.21936 of 2023

WEB COPY

8.The Hon'ble Supreme Court has kept the issue of fact open to be examined on the basis of the records. The learned counsel should examine the records. As a matter of fact, he sought time to look into the records of the Trial Court, which obviously indicates that even without examining the Court records, this particular bail application has been filed.

9.The other judgments cited also follow the same dictum. The law laid down is that compliance under Section 42 is mandatory but whether Section 42 of NDPS Act had been complied or not depends on the facts of each case.

10.In view of all these factors, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

21.11.2023

ata



WEB COPY



Crl.O.P.No.21936 of 2023

C.V.KARTHIKEYAN, J.

ata

Crl.O.P.No.21936 of 2023

21.11.2023