



Crl.OP.No.23265 of 2023

Crl.O.P.No.23265 of 2023

C.V.KARTHIKEYAN,J.

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The petitioner, who was arrested and remanded to judicial custody on 21.05.2022, for the offences punishable under Sections 8(c) r/w 21(c) and 25 of NDPS Act and 225(B) IPC in C.C.No.162 of 2022, now pending before the Special Court for Essential Commodities Act Cases, Coimbatore, in Crime No.44 of 2022, seeks bail.

2.The petitioner is the sole accused. The case of the prosecution is that at the tollgate between Kerala and Tamil Nadu in Nilgiris district, a Car was stopped on 13.05.2022. It is alleged that the petitioner escaped from the Car. When checking the Car, below the seat of the driver, about 100 grams of MDMA tablets were recovered. Thereafter, petitioner was secured on 21.05.2022, at Gudalur in Nilgiris district and at the time of arrest, further 20 grams of MDMA tablets had been seized. It must be pointed out that 10 grams and above would constitute commercial quantity.

3.The learned counsel for the petitioner stated that though final report was filed in the year 2022, there has been no progress in this case. In this connection, the learned counsel also brought to the notice of this Court that the



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first bail petition was dismissed by the learned Single Judge of this Court in

Crl.O.P.No.3066 of 2022, dated 21.02.2022. The learned Single Judge of this Court, while examining the issue of bail of the same petitioner, had directed the Trial Judge to complete the trial within a period of four months from the date of receipt of a copy of that particular order. It is pointed out that though a direction was issued, there is no progress at all.

4.The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh in SLP(Crl.)No.6690 of 2022 dated 25.01.2023***, wherein, the Hon'ble Supreme Court had observed in Paragraph No.3 as follows:

“3.It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantitiy recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to



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commence though the charges have been framed. ”

5. The learned counsel also placed reliance on yet another judgment of the Hon'ble Supreme Court in ***Rabi Prakash Vs. The State of Odisha in SLP(Crl.)No.4169 of 2023, dated 13.07.2023***, wherein, the Hon'ble Supreme Court had observed in Paragraph No.4 as follows :

“ 4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re:formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. ”

6.Placing reliance on the dictum laid in both the judgments, it is the contention of the learned counsel for the petitioner that the Hon'ble Supreme Court had cut down the effect of Section 37 of the NDPS Act and had proceeded to grant bail, where it was found that there has been a long period of



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incarceration and that there is delay in conducting trial process.

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7. In the first case referred supra, ***Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh*** (referred supra), it is seen that the quantity seized was about 92 Kgs of Ganja from the 'Honda City' Car and 65 Kgs of Ganja from 'Swift Dzire' Car. It had been observed that the petitioner had been in custody for about two and half years from 24.06.2020 in that particular case. It had also been noted that there were no previous cases as against the petitioner therein. It was under those circumstances, the Hon'ble Supreme Court had proceeded to grant bail to the petitioner therein. In ***Rabi Prakash Vs. The State of Odisha*** (referred supra), it had been stated that the petitioner therein had spent more than three and half years in custody and therefore, the fundamental rights as guaranteed under Article 21 of the Constitution of India was examined and it was stated that liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

8. The learned counsel in the instant case also forwarded the case history of C.C.No.162 of 2022. A perusal of the same as provided by the learned counsel reveals an interesting aspect. Though the counsel had faulted the Court by arguing that the Court has not proceeded with the trial and also



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prosecution has not commenced the trial, it is seen that the counsel for the accused had entered appearance only on 19.09.2023. Till that date, unfortunately, there is no evidence that the counsel had ever entered appearance for the accused therein. It was adjourned for the issue of furnishing copies and appearance and as a matter of fact, on 14.06.2023, there is an entry of remand. Vakalat/Memo of Appearance had been filed on 19.09.2023 and the next hearing date is only on 03.10.2023.

9. Reasonable presumption can be drawn from the records produced by the petitioner, that the petitioner had not co-operated with trial and thereafter, taking advantage of the fact that there is delay of the trial proceedings, had filed a bail petition in Crl.O.P.No.3066 of 2023. Unaware of all these, the learned Single Judge of this Court had given directions to complete the trial within a period of four months from the date of receipt of a copy of the order, passed in Crl.O.P.No.3066 of 2023, dated 21.02.2023, by dismissing the bail petition. If the petitioner wishes that the trial should be conducted in a speedy manner, for good measure, the petitioner should also co-operate when the witnesses are produced by cross-examining the witnesses on the same day when the chief examination is conducted or within a reasonable period of time.



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When the petitioner had taken a conscious decision to engage a counsel only on

19.09.2023, I am afraid that the respondent cannot be faulted for not conducting the trial in a speedy manner. Speedy trial would commence only when there is an effective representation on behalf of the petitioner. Otherwise, the petitioner can always state that he has not been properly represented and legal aid had been denied to him. Therefore, this is a fact that would hold good for both sides. It is for the petitioner to co-operate with the trial.

10.I would only give direction to the Trial Court to note down the date of framing of charges and recording of evidence and also to note it down in the diary as to why the adjournments are granted. Whether it is sought for on the side of the respondent or on the side of the petitioner herein should be noted in the diary. In the absence of pendency list of that particular Court, it is not possible to ascertain as to how many part heard cases are there and the time period within which the cases would be completed and judgments rendered by the Trial Court. The only direction that can be given is that the petitioner should co-operate and for the prosecution to produce witnesses and petitioner to examine the witnesses on the very same day when the chief examination is conducted. If that is not possible, efforts must be taken for the trial to be



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completed within a reasonable time. Further, as the said quantity of Ganja possessed by the petitioner is a commercial quantity, I am not inclined to grant bail to the petitioner herein. Accordingly, this Criminal Original Petition stands dismissed.

10.10.2023

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