



CrI.OP.No.23935 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner seeks bail in C.C.No.315 of 2021 now pending on the file of the learned II Additional Special Judge, Special Court under EC and NDPS Act, Chennai. The charges have been framed under Sections 8(c), 20(b)(ii)(C), 25 & 29(1) of NDPS Act, 1985.

2.The case of the prosecution is that the petitioner was the driver of the vehicle bearing registration No.AP 31 CY 4590. The car was proceeding from Rajahmundry to Chennai. The second petitioner was the co-passenger.

3.It is stated that when the car was checked, there was 75 kgs of Ganja with bags kept under dicky, back seat and front seat of the car. Both of the accused have been taken into custody on the same day.

4.The learned counsel for the petitioner pointed out Section 52(A) of NDPS Act, 1985, which is the provision relating to seizure of contraband and also of any narcotic drugs or psychotropic substances and also the provisions which relate to taking of samples from the seized products. The Hon'ble Supreme Court in the case of *Mangilal Vs. the*



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State of Madhya Pradesh in *Crl.Appeal No.1651 of 2023*, had occasion to examine the source and object of Section 52(A) of the said Act. It was made imperative that the samples should be seized only in accordance with Section 52(A) of the said Act, which stipulates the samples should be drawn after obtaining necessary orders from the learned Magistrate. This is very obvious, if at all the seized products, appear to be contraband or narcotic substance or narcotic drug or psychotropic substance, but what is sent actually to the laboratory is a mixed substance or drug, then it would be extremely disadvantageous to the accused. It could provide a check that the seized product is actually narcotic drug or psychotropic drug. It has been made mandatory that the samples should be drawn only after obtaining orders from the Magistrate and should be in compliance of the provisions of Section 52(A) of the said Act. But, however, the samples should be drawn only from the contraband which has been seized.

5.Seizure is a different aspect. The contraband can be seized and the same could also be forwarded to the Police Station and also to the Court of Magistrate. That is the first aspect and the second aspect is



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taking of samples. In the instant case, the contraband had been seized from the vehicle which the petitioner was driving and in which, the second accused was a co-passenger.

6.The learned counsel pointed out the confession statement of the petitioner herein wherein he had stated about two other individuals who had provided him with the vehicle and also the name of yet another person in Chennai from whom the contraband was supplied. But in the very confession itself, it is stated that the contraband is ganja. There is no doubt about that particular fact. It is the contention of the learned counsel for the petitioner that those named individuals had not been added as accused.

7.A confession is not an admissible piece of evidence and it can never be acted upon. But if a statement made in the confession is substantiated during the course of evidence when recorded in the Court, then under Section 319 of Cr.P.C., anybody could be added as accused. Therefore, at this stage, merely because the prosecution had not added the persons names in the confession as an accused, it could not be either



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by the advantage of the petitioner or to the disadvantage of the prosecution. The trial has to be proceeded.

8.Insofar as the seizure is concerned, the case records will have to be examined, to determine whether it was done in accordance with law. That is again a matter of trial and matter of evidence and also of the records relating to taking of samples from the seized product. These are all issues for trial.

9.The learned counsel had placed reliance on a string of judgments, wherein, it is stated that if trial is delayed for a considerable period of time, the accused are entitled for grant of bail. It is seen that the matter is now listed for examination of witnesses and there is also no Presiding Officer in the said Court.

10. A only direction can only be given is to commence the trial at the earliest and endeavour to record the evidence of witnesses by recording atleast the evidence of two witnesses in a week. This would be possible only if the accused also co-operate and cross examine the witnesses on the same day. If they do not cross examine the witnesses, merely giving a direction to the Presiding Officer to conduct the trial,



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would be meaningless. Therefore, a direction is given not only to the prosecution but also to the Presiding Officer and also to the counsel for the accused that they must endeavour that atleast two witnesses are examined every week and cross examination is also done by the next week. If this is done, then the trial could be completed within a reasonable period of time.

11. At this juncture, this Court is not inclined to grant bail to the petitioner.

12. Hence, this Criminal Original Petition stands dismissed.

17.10.2023

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