



CrI.O.P.No.24200 of 2023

C.V.KARTHIKEYAN, J.

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The petitioner, who was arrested and remanded to judicial custody on 25.06.2022, seeks bail in C.C.No.557 of 2022 which is now pending before the learned I Additional Judge, Special Court for Exclusive Trial of Cases Under NDPS Act, Chennai. Originally, Crime No.22 of 2022 had been registered by the respondent police under Section 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act, 1985.

2.The case of the prosecution is that, on 25.06.2022 at around 8.00 a.m., the respondent had received secret information and entered the same in the general dairy and got permission from the Deputy Superintendent of Police and went with her police team to Kilambi Junction in Chennai and Bangalore Highway and conducted a vehicle check up. Both the accused A1 and A2 came in TATA Spacio Gold Car bearing registration Number TN-09-AT-1566. The car was stopped and searched and it was found that A1 and A2 were in illegal possession of 60 Kgs of dry Ganja, which was seized. It was also stated that the quantity was commercial quantity. The car and contraband were seized. Thereafter, samples were also taken.



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3.The learned Senior Counsel appearing on behalf of the petitioner, did not dispute the fact that the two accused were travelling in the said car and did not dispute the fact that there was seizure of 60 Kgs of dry Ganja from the car and did not dispute the fact that the Ganja was seized from the car in the presence of two accused. The only point, which is urged for grant of bail, is about the method by which the samples were drawn. That is an issue which could be examined during the course of trial.

4.However, it is contended on the basis of judgments of various learned Single Judges of various High Courts and also of a learned Single Judge of this Court and also of the Hon'ble Supreme Court, that the Court should examine whether the sample had been taken in proper manner and if not, the Court should give an opinion that there could be a possibility of acquittal of the accused and therefore, the rigour under Section 34 of the NDPS Act, 1985 would not come into play and hence seeks bail to the petitioner herein / A1.



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5. In this connection, the learned Senior Counsel took the Court through the First Information Report about the fact of seizure and the fact of drawing samples. Subsequent investigation has to be done with respect to each aspect stated in the First Information Report to find out whether the allegations stated therein are established during the course of investigation and thereafter, the final report will have to be filed.

6. But, even otherwise, in the First Information Report, which the learned Senior Counsel took the Court through, it had been stated that the aforementioned car bearing Registration No. TN-09-AT-1566 was intercepted and when the respondent police opened up the front bonnet, they found that the engine was lowered to a level lower than it normally would be and in that place 20 packets of Ganja had been stacked and thereafter, when the car was seized and searched under the chassis, a separate enclosure was specially made and in that, 10 packets were seized and therefore, 30 packets were totally seized. It was stated that in each packet there were 2 Kgs of Ganja. They were all common homogeneous similarly packed packets. There were totally 60 Kgs of Ganja. They were all seized. The respondent had clubbed the packets into groups of 10,



and then from each of the 10 packets had drawn samples. It had been stated that the samples had been drawn from 10 packets, which would mean from 20 Kgs of Ganja and clubbing that, three separate samples were taken. There was also a duplicate sample taken, which would mean that from 20 Kgs two separate samples were taken, one to be forwarded to the laboratory for testing and the other to be retained, if at all the first test does not give out a proper or clear result. Therefore, three separate samples had been taken clubbing the packets in groups of 10 packets each.

7.The learned Senior Counsel however stated that from each packet a sample should be taken. In this connection, he placed reliance on the Standing Orders, which had been stated in the petition seeking bail. The Standing Orders lay down the general procedure for sampling and storing. They are given in Standing Order No.1 of 1989 issued by the Government of India, Ministry of Finance (Department of Revenue) dated 13.06.1989. Two particular possibilities had been stated in the Standing Order. The first one is that all the packets and containers should be serially numbered and kept in lots for sampling. It had also been stated



that the samples shall be taken at the spot of recovery, in duplicate, in the presence of persons in whose possession the drugs were seized.

8. In the instant case, it is not the case of the petitioners that, they were not physically present when the samples were taken. They were very much physically present. It had thereafter been stated as to how the samples should be taken. It had been very specifically stated that if there is packet which numbers less than 10, then from each packet not less than 5 grams of the contraband shall be taken and if it is Ganja less than 24 grams is required for chemical test. There is an exception or a further procedure given and that is if there are more than 10 packets which are homogeneous, which are similar and in which the same product is found, then clubbing all the 10 packets together, two samples can be taken, one sample for testing and other in duplicate. This is what is given in the Standing Order 1 of 1989 and this has been reiterated in all the judgments given by the learned Single Judges of various High Courts and by the Hon'ble Supreme Court. If it found there has been a violation of this procedure, then there can be consideration of grant of bail on the ground that there would be possibility of acquittal on conclusion of trial.



9.Learned Senior Counsel for the petitioner relied on a judgment of a learned Single Judge of this Court in ***Crl.O.P.No.27363 of 2022 dated 22.11.2022, Musharaf @ Muhammed Aslam Vs. State, Rep. by Inspector of Police, H-1, Washermenpet Police Station, Chennai.*** The facts in that particular case are that the respondent found the accused to be in possession of 300 tablets of 10 mg Nitroxit in 30 packets totally 9000 tablets kept in black colour box. They had taken a sample of 60 tablets and the remaining tablets were seized in the presence of police witness. There was a further confession and the 2nd accused was also arrested and a further 1200 tablets of 10 mg Nitroxit were seized. Thereafter, the accused had been arrested. In that particular judgment, the learned Single Judge had recorded the submission made on behalf of both the petitioner and the respondent and had stated that there had been violation of the judgment of the Hon'ble Supreme Court reported in ***(2008) 16 SCC 417 , Noor Aga Vs. State of Punjab.*** The learned Single Judge stated that admittedly there has been no compliance. It had been stated that there had no substantial compliance of guidelines.



10.I must point out that, the learned Single Judge had not stated, as to what was the lacuna in the taking of the samples. As a matter of fact, finally, the learned Single Judge had stated that no samples at all was taken, when as a fact, in the earlier paragraph it had been clearly mentioned that samples had actually been taken. This judgment would not come to the rescue of the petitioner and it is distinguishable on facts.

11.The learned Senior Counsel then relied on the judgment of a learned Single Judge of the Delhi High Court in ***Crl.A.No.1027 of 2015 and Crl.M.B.No.511 of 2019 and Crl.M.A.No.1660 of 2020, Amani Fidel Chris Vs. Narcotics Control Bureau dated 13.03.2020***. It must be stated that it was a judgment, which was delivered in an appeal after conviction. It was not a judgment seeking bail before conviction or before evidence had been let in. The evidence therein had been examined and during the course of evidence, the manner in which the samples had been taken had been examined and thereafter, it was held that it would serve the ends of justice, if the accused therein were acquitted and therefore the order of conviction was reversed.



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12. Here, the trial had not yet started. The charges, in fact, has not been framed. Therefore, the Court will only have to go with the version of the prosecution and as stated by me, three separate samples have been taken from 10 packets, which each contained 20 Kgs. That procedure has not been questioned during the course of arguments. This judgment, which had been rendered after conviction, is also not applicable to the facts of this case and is distinguishable.

13. The learned Senior Counsel then placed reliance on the judgment of the Chhattisgarh High Court dated 07.02.2023 in ***CRA No.916 of 2021, Ramjeet Singh Rathore Vs. State of Chhattisgarh.*** That was the case seeking Suspension of Sentence under Section 389(2) Cr.P.C. It must be stated that, even in that particular judgment, it had been observed that the learned Trial Judge had convicted the appellant therein and had sentenced him to various terms of imprisonment. Once again, evidence had been analysed. Evidence had been analysed after prosecution had been given an opportunity to lead evidence. That particular evidence had been analysed and it had been found that the



samples had not been properly taken. Let me also once again state, even in that particular case, the seizure was 13 jute bags of 40 packets of contraband. It was stated that the prosecution should have taken samples in duplicate from each packet whereas, after mixing the entire contraband, they had taken only two samples. This is not the case of the present case. Clubbing 10 packets each, two samples have been taken, one for testing and another one as a duplicate. Therefore, it could not be complained that the procedures had not been followed. The facts differ and the judgment had been rendered after evidence had been let in.

14. In the petition seeking bail, the petitioner had relied on the judgment of the Hon'ble Supreme Court reported in **(2008) 16 SCC 417, Noor Aga Vs. State of Punjab**. There was extraction of the relevant paragraphs, I would also extract the same for ready reference:

“89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in



mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the subordinate authorities to comply therewith.

*90. Recently, this Court in **State of Kerala v. Kurian Abraham (P) Ltd. [(2008) 3 SCC 582]** , following the earlier decision of this Court in **Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1]** held that statutory instructions are mandatory in nature.*

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution .”



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15.It had been stipulated by the Hon'ble Supreme Court that the guidelines as stated should be very strictly followed and there cannot be any violation and there must be substantial compliance and compliance must be insisted upon, so that sanctity of the physical evidence remains intact. The observations are binding on this Court but, the Court can examine them only when it is very specifically pointed out that there has been violation in the procedure for taking samples. To that extent, the First Information Report has been read. There has been no such violation.

16.In view of the above observations, this Criminal Original Petition stands dismissed.

07.11.2023

smv



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