



Crl.OP.No.27199 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner seeks bail in C.C.No.334 of 2021, in which trial is now pending before the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. Originally, FIR in Crime No.856 of 2021 was registered by the respondent police for the offence punishable under Sections 8(c) r/w 20(b)(ii)(B) NDPS Act and remanded to judicial custody on 15.11.2021.

2.It is the case of the prosecution that on 15.11.2021, a report had been filed under Section 57 of the NDPS Act, stating that an information was received about sales of ganja and after instructions were obtained, three persons including the petitioner herein had been taken into custody. It is also stated that 1 kg of ganja had been seized at that particular place. Thereafter, after the petitioner had been arrested, they went further down during the course of investigation and went over to the house of the 1st and 2nd accused and seized a further 24 kgs of ganja.



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3.The respondent had drawn a chain between the two incidents namely the arrest of the accused and seizure of 1 kg and subsequent seizure of 24 kgs of ganja based on the information received at that time of arrest. The quantity seized is commercial in nature.

4.The learned counsel for the petitioner placed reliance on the orders passed by a learned Single Judge of this Court with respect to grant of bail to the other accused and stated that the petitioner should also be treated with parity of that accused. During the course of said order, the learned Single Judge had examined the actual weight of the ganja after removing the dust and other aspects and had come to the conclusion that the weight of the contraband would be 19 kgs and therefore, came to the conclusion that it is less than commercial quantity and thought that justice would be served by grant of bail.

5.It is also submitted by the learned counsel for the petitioner that copies were served under Section 207 Cr.P.C, of all documents that the prosecution relied on. The documents relating to search and seizure had



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also been produced and it was stated by the learned counsel that the signature of the witnesses in the said documents differ from one another and therefore stated that this should also be considered by this Court for grant of bail. The learned counsel for the petitioner further stated that there was an earlier direction of this Court that trial should be completed within a period of 6 months and since trial had not been completed, there has been violation of Article 21 of the Constitution and the petitioner is entitled for speedy trial and the Court should condemn continuous incarceration, particularly, when there is a delay in trial proceedings.

6.The learned Government Advocate (Criminal side) on the other hand, very strongly disputed the contentions and pointed out that sofar as the signatures in the documents are concerned, the learned counsel for the petitioner had based his arguments only on his appreciation of the signatures by looking at it with naked eye and there has been no scientific examination of the signatures and therefore, at this stage, the statement that the signatures differ are neither here nor there and no conclusion can be reached by any Court. Certainly that could not be a ground for grant of bail.



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7.Insofar as the trial process is concerned, it is stated by the learned Government Advocate (Criminal side) that though there was a direction to complete the trial within a period of 6 months, the prosecution had examined the witnesses, but applications have now been filed on behalf of the accused under Section 311 Cr.P.C to recall the witnesses for cross examination. It must be kept in mind that these applications have been filed after obtaining an order from the learned Single Judge that the trial should be completed within a period of 6 months.

8.The trial can never be completed within any stipulated period, if any applications are filed subsequently. Therefore, I do not find fault with the trial Judge for not being able to comply with the directions passed by the learned Single Judge to complete the trial with a stipulated period.

9.The third issue which now remains to be addressed is the issue of



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grant of bail to the other accused and the observation of the learned Single Judge while granting bail that the total quantity of seized ganja is only 19 kgs. That, observation was on the basis of records produced. The learned Single Judge had apparently had subtracted the dust and other materials which are invariably found within the ganja leaves and had taken up the actual quantity of the ganja. Again, that is an issue which can be addressed only during the course of trial. The investigation officer should be granted an opportunity to explain as to what was the actual weight of the seized contraband and thereafter the investigation officer should be given an opportunity to explain as to the dust particles in the seized contraband and what is the net weight of the actual contraband. These are issues which have to be examined during the course of trial. At this stage, bail cannot be granted.

10.The role of each of the accused have to be examined independently. Insofar as this petitioner/1st accused is concerned, from the house of the 1st and 2nd accused, according to the prosecution 24 kgs of ganja had been seized, which is commercial quantity. The provision under



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Section 37 of NDPS Act stipulates that there must be reasonable grounds for the acquittal of the accused. This reasonable ground cannot be found on the basis of the records available, particularly because, examination in chief had already been adduced by the prosecution. If this Court examines whether there are reasonable grounds for acquittal then the deposition of the witnesses already let in, will have to be screened by this Court and analysed by this Court. That is the prerogative of the trial Court and certainly not of this Court and not at this stage.

11.In view of all these reasons, more particularly, since the petitioner is from Tiripura, and there is every possibility of the petitioner absconding, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

12.12.2023

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