



Crl.O.P.No.27562 of 2023

C.V.KARTHIKEYAN,J.

The petitioner/A2 seeks bail in Crime No.265 of 2023, registered by the respondent police for the offences punishable under Sections 272, 273, 328 of IPC and Section 6 r/w 24(1) of COTPA Act. The petitioner had been remanded to judicial custody on 24.11.2023.

2.It is the case of the prosecution that originally the respondent had found 8 kgs of banned tobacco products in the shop of A1 and on his confession, they had searched the house, which is owned by the present petitioner/A2 and recovered 559 kgs of banned tobacco products.

3.The learned counsel for the petitioner states that the petitioner, who is the owner of the house, had leased out his house to another person and since that person had gone home for Diwali, the seized products had been recovered and the petitioner has been arrayed as an accused.



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4.The owner of the house should be careful that the house which he leased out should not be used for unlawful purposes. If it is used for unlawful purposes, then it can be very easily taken as it has been done so only with the consent of the owner of the house and that the owner has consented for the tenant to use it for illegal and unlawful purposes. Therefore, the fact that it had been rented out will not take the petitioner anywhere.

5.The learned counsel for the petitioner also placed reliance on the judgment of a learned Single Judge of this Court in ***Crl.O.P.No.17533 of 2023, (Thangaraj @ Thangarasu Vs. The State, rep. by the Inspector of Police, Paramathi Police Station, P.Velur Taluk, Namakkal District and Another)*** wherein, the learned Single Judge of this Court had held that in order to bring home the commission of an offence under Section 328 IPC, the prosecution must show that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug. The only manner in which the drug can be identified to be poison, stupefying, intoxicating or unwholesome is for the person who seizes it to consume it and then find whether he falls down unconscious, stupefied or is afflicted with any one of the symptoms of intoxication and come to a conclusion that the drug is unwholesome.



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6.The judgement under reference has no connection with this case. The seized drugs will have to be referred to chemical analysis and they will have to be given a report. Moreover, that particular judgment had been given under Section 482 of Cr.P.C., and here it is a question of bail. At this stage, *prima facie* decision will have to be taken, whether the petitioner would continue to do the offence, whether he would abscond and whether the petitioner's presence in the society would be danger. The petitioner's presence in the society would continuously be a danger since he is in the habit of storing nearly about 850 kgs of banned tobacco products.

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

07.12.2023

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