



Crl.O.P.No.849 of 2024

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C.V.KARTHIKEYAN,J.

The petitioner who is arrayed as A2 in Spl.C.C.No.96 of 2022 before the Special Judge for EC and NDPS Act cases, Salem, seeks bail.

2.Originally, Crime No.530 of 2021 had been registered by the respondent Police for the offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act.

3.It is the case of the prosecution that the respondent had intercepted an Ashok Leyland lorry bearing registration No.AP 16 TA 6197 at Kottaivasal, Denkanikottai to Hosur road, on 17.12.2021 and found this petitioner, who had been shown in the FIR as A1 and A2 and A3 in the said lorry and there were also six polythene bags which contained 300 kgs of Ganja with 50 kgs of Ganja in each bag. After following due procedure, the contraband and the properties had been seized from the petitioner and the other accused under the cover of Mahazar and the petitioner was also remanded to judicial custody. Thereafter, on the basis of the confession, by filing charge sheet, the rank of this accused was re-arranged as A2 and A1 was shown who had been implicated by all the other accused. During the course of investigation/trial, A1 died and the charges against him had abated.



CrI.O.P.No.849 of 2024

4.The learned counsel for the petitioner primarily placed reliance on the order of the learned Additional District Judge & Presiding Officer, Special Court under EC and NDPS Act cases, Salem, in C.M.P.No.576 of 2022, who by an order dated 08.07.2022, considered the bail application of A3/Harish, who was that particular time A2 and granted bail. That bail application was actually filed by that accused under Section 167(2) Cr.P.C, but was not considered under that provision since charge sheet had been filed. The only reason given by the learned Sessions Judge for granting bail is as follows:

“Inspite of the fact that, the petitioner/accused has been detained under Goondas Act, this Court observes that, since Charge Sheet has been filed by the concerned Police within the stipulated time, this Court is inclined to allow this application.”

5.Thereafter, it had been observed that the petitioner therein had been in incarceration for more than 200 days and therefore, the bail was granted. This order is relied on by the learned counsel who stated that this petitioner is a co-accused and seeks parity and therefore, claims bail to be granted.



CrI.O.P.No.849 of 2024

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6.A counter affidavit had been filed on behalf of the respondent wherein they had stated about the seizure of 300 kgs of Ganja from the lorry wherein this petitioner was also physically present and the seizure was from polythene bags in the custody also of this petitioner. Therefore, this petitioner was not only under the physical possession and also in conscious possession of the contraband. 300 kgs of Ganja which had been seized is commercial quantity.

7. Any order stating bail with respect to commercial quantity should examine the stipulations under Section 37 of NDPS Act which provides three separate conditions namely that there must be a reasonable ground that the accused would be acquitted and notice should be issued to the public prosecutor and opportunity should be granted for the public prosecutor to raise objections and there must not be any possibility of the accused committing the same offence again.

8.In the instant case, when the order of the learned Sessions Judge is perused, it is seen that notice to the public prosecutor had been issued and he had also raised strong objection including that the petitioner therein had detained as a Goonda under Act 14 of 1982. But however, the learned Sessions Judge had not examined whether there are reasonable grounds for



CrI.O.P.No.849 of 2024

acquittal and had observed that since the petitioner therein had been detained under Act 14 of 1982, since charge sheet has been filed, the petitioner is entitled for grant of bail.

9. Registry may call for an explanation from the learned Additional District Judge, Special Court under EC and NDPS Act cases, Salem, who was presiding over the said Court on 08.07.2022 as to the grounds which played on the mind of the learned Sessions Judge for grant of bail without examining any of the provisions under Section 37 of NDPS Act and even without mentioning that particular proviso of law, when particularly, the quantity of Ganja seized was commercial in nature and the quantity was 300 kgs.

10. Be that as it may, it is seen that this petitioner was physically present in the lorry when the Ganja was seized, which measured 300 kgs.

11. The recovery had been made and there has been no complaint that the recovery was not made properly. The seizure had been made. The petitioner had been arrested. The only statement made by the learned counsel for the petitioner is that there had been a delay in forwarding the seized materials to the Court. That is an issue which will have to be examined during the course of trial.



Crl.O.P.No.849 of 2024

12.In the counter affidavit, it had been stated that all the procedures as stated under the NDPS Act had been complied with including taking of samples in the manner known to law and seizure of the ganja and also the remand of the accused before the Court.

13.In view of these facts since no ground had been made for grant bail, I am not inclined to grant bail to the petitioner.

14.Hence, this Criminal Original Petition stands dismissed.

15.The explanation may be forwarded by the learned Sessions Judge to this Court on or before 12.02.2024.

16.List the matter on 12.02.2024 for reporting compliance.

31.01.2024

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Note: Registry is directed to mark a copy of this order to the Additional District Judge/ Presiding Officer, Special Court under EC and NDPS Act cases, Salem



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Crl.O.P.No.849 of 2024

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Crl.O.P.No.849 of 2024

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