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CRL.O.P No.691 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.691 of 2024

Gowtham,
S/o.Natarajan

...Petitioner

Vs.

State represented by,
The Inspector of Police,
P.E.W-Erode Police Station,
Erode District.
(Crime No.795 of 2023)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the returned docket order made in unnumbered Crl.M.P.SR.No.51 of 2024 dated 03.01.2024 on the file of the learned Special Court for Essential Commodities Act Cases, Coimbatore.

For Petitioner : Mr.N.Arun Kumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

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This petition has been filed challenging the docket order passed by the Court below dated 03.01.2024 returning the application filed by the petitioner for bail.

2.The investigation is pending before the respondent police in Crime No.795 of 2023 for offence under Section 8(c) read with 20(b)(ii)(C) of NDPS Act. There are totally three accused persons in this case and the petitioner has been arrayed as A1.

3.The petitioner was arrested and remanded to judicial custody on 18.10.2023. The petitioner was in judicial custody for more than 80 days. In spite of the same, the investigation was not completed and no final report was filed. According to the petitioner, he was found in possession of only 500 grams of Ganja and the commercial quantity of 50 Kgs of Ganga was only seized from the house of A2.

4.The petitioner initially moved a bail application in C.M.P.No.3860 of 2023 and this application was dismissed by an order dated 29.11.2023 as not maintainable.



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5. According to the petitioner, he was not in possession of commercial quantity and insofar he is concerned, the statutory period is over and he is entitled for a statutory bail under Section 167(2) of Code of Criminal Procedure. Hence, the petitioner once again filed an application seeking for statutory bail. This bail application has also been returned vide the impugned written endorsement dated 03.01.2024 as not maintainable. Aggrieved by the same, the petitioner has filed the present criminal original petition before this Court.

6. Heard Mr.N.Arun Kumar, learned counsel for the petitioner and Mr.A.Damodaran, Additional Public Prosecutor on behalf of the respondent.

7. The petitioner cannot seek for a statutory bail based on what was recovered from him. The petitioner is only one of the accused person and the First Information Report had been registered as against three accused persons from whom total of 50 Kgs and 500 grams of Ganja was seized. Therefore, the case involves commercial quantity and hence, the statutory bail can be claimed only by taking this into consideration. Therefore, technically, the bail application under Section 167(2) of Code of Criminal Procedure may not be maintainable.

8. The petitioner had moved a regular bail application before the Court



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below on an earlier occasion and this bail application has also been rejected by an order dated 29.11.2023 on the ground that it is not maintainable. Such finding rendered by the Court below may not be sustainable. The Court below has to necessarily entertain the bail application and hear the same and since the matter involves commercial quantity, the requirements under Section 37 of the NDPS Act will apply to the case. The Court below has to apply its mind and pass final orders in that bail application.

9.In the light of the above discussion, it is left open to the petitioner to move a fresh bail application before the Court and the Court below shall entertain the same and afford opportunity to the respondent police. The Court below shall deal with the application in line with Section 37 of NDPS Act.

9.This Criminal Original Petition is disposed of in the above terms.

12.01.2024

Index: Yes/No

Speaking order/Non-speaking Order

Neutral Citation: Yes/No

ssr/mkn2

Note:Issue Order Copy on 18.01.2024

To



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- 1.The Special Court for Essential
Commodities Act Cases,
Coimbatore.
- 2.The Inspector of Police,
P.E.W-Erode Police Station,
Erode District.
- 3.The Public Prosecutor,
High Court, Madras.



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