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Crl.O.P.No.998 of 2024

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A.D.JAGADISH CHANDIRA, J.

The petitioner (A1) who was arrested and remanded to judicial custody on 30.04.2022 in C.C.No.343 of 2022 pending trial on the file of the learned Principle Special Judge (EC and NDPS Cases), Chennai, in connection with Crime No.216 of 2022 registered for the offences punishable under Sections 8(c) r/w 20(b) (ii) (C), 25 and 29(ii)(a) of Narcotic Drugs and Psychotropic Substances Act, 1985, and later, altered to the Sections 8(c) r/w 20(b)(ii) (C), 25, 29(i) of NDPS Act, 1985, seeks bail.

2. The case of the prosecution is that on 30.04.2022, on receipt of a secret information about the illegal transportation of narcotic substances, the respondent along with his team, conducted a vehicle check-up in Wall Tax Road, NSC Bose Road Junction, during which, they found that the accused, who were coming in a four wheeler bearing



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Registration No.TN-07-BF-2381, were in illegal possession of 60 Kilograms of Ganja which was kept in two bags in the car's boot. The respondent had arrested the accused, recorded their confession statements and seized the contraband under the cover of seizure mahazar in the presence of witnesses and registered a case in Crime No.216 of 2022. After completion of investigation, final report has been filed and the case has also been taken up for trial in C.C.No.343 of 2022, on the file of the learned Principle Special Judge (EC and NDPS Cases), Chennai. Hence the case.

3. Mr.K.Madhu, learned counsel appearing for the petitioner submitted that this is the fourth application for bail filed by the petitioner (A1). He also submitted that this Court, while dismissing the bail application filed by the petitioner in Crl.O.P.No.11236 of 2023 on 08.06.2023, had directed the trial Judge to complete the trial as expeditiously as possible, preferably, within a period of four months from the receipt of a copy of that order, however, the trial has not been commenced so far. Thereby, due to the delay in the trial, the petitioner is



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entitled to grant of bail. In support of his contention, he had relied on the judgment of the Hon'ble Apex Court in ***Mohd Muslim @ Hussain vs. State (NCT of Delhi)*** reported in ***2023 LiveLaw (SC) 260***.

4. Learned counsel appearing for the petitioner further submitted that in the charge alteration report, the respondent stated that the amount of Ganja recovered from the petitioner was 10 kilograms. He also submitted that the respondent has not complied with Section 52 A of the NDPS act and further, the petitioner has been in custody from 30.04.2022, therefore, he prayed for grant of bail.

5. The respondent has filed a detailed counter. The relevant paragraph is extracted hereunder:-

“15. It is submitted that the contraband seized in this case is of commercial quantity and that it attracts Sec.37 of the NDPS Act. It is also submitted that the petitioner have to satisfy the twin conditions as imposed under this Section. It is submitted that of the accused is let out on bail there is every possibility



that he will flee away and hamper the trial. Hence the accused is not entitled for bail.

16. It is submitted that due to inadvertence, mistakenly the respondent police typed in the Section Alteration Report that the seized Ganja is 10 Kg; however the correct particulars are mentioned in FIR, Charge Sheet. Further the respondent police has prepared a requisition letter to the Learned Principal Special Court for EC and NDPS Act, Chennai that mistakenly typed the seized ganja is 10 KG instead of 30 Kg and the same is yet to be filed before the concerned Court.

17. It is submitted that Petitioner filed a Section 91 CrPC petition before the Hon'ble NDPS PJ Court vide in Crl.MP.No.4599/2022 and it was pending long time. After the enquiry Hon'ble NDPS PJ Court dismissed the above petition on 10.02.2023. Hence the Defense side filled appeal against the above order on Hon'ble High Court of Madras vide in Crl.O.P.No.5105/2023 and the same was dismissed on 12.09.2023. It is further submitted that the Petitioner through another counsel filed another petitioner under Section 91 C.r.P.C. before the Hon'ble NDPS



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PJ Court vide in Crl.MP.No.5231/2023 and the same was withdrawn on 19.01.2024. Now the case was posted for LW2 on 08.02.2024.”

6. Mr.S.Santhosh, learned Government Advocate (Crl.Side) appearing for the respondent submitted that this is the third application for bail filed by the petitioner. He further submitted that it is true that there had been an inadvertent mistake in the alteration report, wherein, the contraband stated to be recovered from this petitioner is mentioned as 10 kilograms instead of 30 kilograms, due to the typographical error, whereas in FIR and in all other materials, the contraband recovered is shown only as 60 kilograms. He also submitted that the petitioner, who is arrayed as A1 in this case, had illegally transported 30 kilograms of ganja by concealing the same in the secret chamber of the car boot. He further submitted that this Court, taking into consideration the amount of contraband recovered from the petitioner and the other two accused, had dismissed the earlier bail applications stating that the petitioner has not satisfied the conditions required under Section 37 of NDPS Act.



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7. Learned Government Advocate (Crl.Side) submitted that though a direction has been issued by this Court to complete the trial as expeditiously as possible, the delay is not on the part of the prosecution. He further submitted that the petitioner has filed a petition before the trial Court under Section 91 Cr.P.C, which came to be dismissed on 10.02.2023 and against which, the petitioner has also preferred a Criminal Original Petition in Crl.O.P.no.5105 of 2023 before this Court and the same has also been dismissed on 12.09.2023. He also submitted that the petitioner herein through another counsel had filed yet another petition under Section 91 Cr.P.C and it was withdrawn. He further submitted that non compliance with Section 52 A of the NDPS act or otherwise is a matter for trial that can be agitated only at the time of trial. Thereby, the delay cannot be attributed on the part of the prosecution. Hence, he objects to the grant of bail.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.



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9. It is the case, where the petitioner, who is arrayed as A1 in this case, along with other accused was found to be in illegal possession of 60 kilograms of Ganja, which is a commercial quantity, in the car. This Court, finding that the petitioner had not satisfied the twin conditions as required under Section 37 of the NDPS Act, had dismissed the earlier bail applications filed by him.

10. Further, the judgment in *Mohd Muslim @ Hussain vs. State (NCT of Delhi) cited (supra)* referred by the learned counsel for the petitioner is the case where the accused was arrested in the year 2015 and the Hon'ble Apex Court finding that the delay was attributed to the prosecution, had granted bail, whereas, the facts in respect of this case is concerned, the delay cannot be attributed to the prosecution.

11. Taking into consideration the above facts and circumstances of the case and the submissions made by the learned counsel on both sides and finding that there is no delay on the part of the prosecution and only the accused is responsible for the delay in the progress of the trial, this Court is not inclined to grant bail to the petitioner.



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12. Accordingly, this Criminal Original Petition stands dismissed.

05.02.2024

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