



Crl.O.P.No. 3300 of 2024

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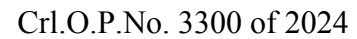
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T.V.THAMILSELVI, J.

The petitioner, who was arrested and remanded to judicial custody on 08.01.2019 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(c), 27(A), 28 and 29 of NDPS Act, in NCB. F.No.48/1/02/19-NCB/MDS on the file of the respondent police, pending trial in C.C.No. 116 of 2019 on the file of learned Principal NDPS Court, Chennai seeks bail.

2. The case of prosecution is that on receipt of secret information about transportation of ganja, the respondent police along with his team went intercepted the vehicle with the petitioner along with two other accused and conducted a search in the car, they found the petitioner along with other accused are involved in illegal transportation of 50 packets of ganja, which is weighing around 107.02 of ganja. Accordingly, the complaint was registered against the petitioner.

3. The learned counsel for the petitioner submitted that this is



He would further submit that while dismissing the first petition for bail, there was a direction to the trial court to dispose the case in the month of January 2024, so far trial has not been completed. He would submit that he is no way connected with the offence and he has not at all committed any offence as alleged by the respondent police. He would submit that he has been falsely implicated by the respondent police in this case and he is ready to abide by any condition that may be imposed by this Court and co-accused was released on bail. He would further submit that the investigation is almost completed and so far, there is no progress in the trial. Hence, he prayed to grant bail to the petitioner. In support of his contentions, he has relied the order passed by this Court in CrI.O.P.No.7652 of 2023 in respect of another accused, wherein this court granted bail for him and he has also relied the ratio laid down in the authority reported in **2023 LiveLaw (SC) 260** in the case of ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi)***, wherein the Apex Court held in paras 13 and 21 as follows:-

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion



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(like [Section 37](#) of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest – as observed in [Vaman Narain Ghiya v. State of Rajasthan](#)¹¹ (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in [Kartar Singh v. State of Punjab](#)¹² made observations to this effect. In [Shaheen Welfare Association v. Union of India](#)¹³ again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of



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such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected 11 [2008] 17 SCR 369: (2009) 2 SCC 281 12 [1994] 2 SCR 375: (1994) 3 SCC 569 13 [1996] 2 SCR 1123: (1996) 2 SCC 616 against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

21. *Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*

4. By way of reply, the learned Government Advocate (Crl. Side) appearing for respondent would submit that though the trial was completed



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and all the witnesses were examined, on the side of petitioner, a recall petition was filed. He would submit that he has no bad antecedents and he is in custody for more than 5 years. He would submit that if he is released on bail, he would hamper the investigation and tamper the witnesses Hence, he strongly opposed to grant bail to the petitioner.

5. Considering the facts and circumstances of the case and the submissions made by both counsel and also considering gravity of offence committed by the petitioner and now the trial was completed and all the prosecution witnesses were examined and the fact that the co-accused were released on bail and also considering the fact that due to a recall petition filed by the petitioner, now the case is pending and the fact that if he is released on bail, there is possibility of tampering the witnesses and hampering the investigation and on seeing the past antecedents of petitioner, this Court is not inclined to grant bail to the petitioner. Furthermore, the authority relied on by the petitioner reported in **2023 LiveLaw (SC) 260** in the case of **Mohd. Muslim @ Hussain vs. State (NCT of Delhi)** is not applicable to the facts of the case. However, the trial court is directed to



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dispose the case within a period of eight weeks from the date of receipt of copy of this order and the petitioner is also directed to cooperate with the trial proceedings. Accordingly, this Criminal Original Petition is dismissed.

22.02.2024

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T.V.THAMILSELVI, J.

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