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CRL O.P. No.27077 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.27077 of 2024

Balaram Pujari

... Petitioner / Accused-2

Vs

State rep. by:-

The Inspector of Police,
Pallikaranai PEW, Tambaram City PEW,
Chennai.

... Respondent

[Cr. No.54 of 2024]

PRAYER: - The Criminal Original Petition is filed under Section 483 of B.N.S.S., praying to grant bail to the petitioner/Accused in Cr. No.54 of 2024 on the file of the respondent police.

For Petitioner : Mr. M.G. Martin Manivannan

For Respondent : Mr. S. Balaji
Government Advocate
[Criminal side]

ORDER

The petitioner / Accused, who was arrested and remanded to judicial custody on 12.02.2024 for the offences punishable under



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Sections 8(c), 20(b)(ii)(C), 29(1) and 25 of NDPS Act, 1985 in Cr. No.54 of 2024 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 12.02.2024, at about 18 hrs, the respondent police intercepted two vehicles nearby the over bridge next to Kamatchi Hospital and found the accused in possession of 50 kgs of Ganja. Hence the case.

3. The learned counsel for the petitioner would contend that the respondent police have registered a false case against the petitioner for the offences punishable under Sections 8(c), 20(b)(ii)(C), 29(1) and 25 of NDPS Act, 1985 and he was arrested and remanded to judicial custody on 12.02.2024. Even according to the prosecution, at the time of search, they failed to follow the mandatory procedures under Section 42 of NDPS Act and no reasons have been recorded, when the car was intercepted after sunset and before sunrise as per Section 42(I)(d) proviso when the officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may



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enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief. But that grounds have not been recorded by the concerned police officer in this case, at the time of seizure in the car. Further, as per Section 42(2) of NDPS Act, within 72 hours, the same has to be informed to the superior officers, that also has not been complied with. Therefore, the mandatory procedures have been violated. This Court already dismissed the earlier bail application and directed the trial Court to complete the trial within 4 months. The petitioner is entitled for bail for the procedural violations.

3.1. The learned counsel appearing for the petitioner has relied upon judgments in *Sarija Banu (A) Janarthani @...vs. State reported in (2004) 12 SCC 266 and Pankaj vs. State of Punjab* and prayed to grant bail to the petitioner.

4. The learned Government Advocate (Criminal Side) would submit that the petitioner has possessed commercial quantity of Ganja of 21 kgs and the same was also recovered from him and the contraband involved in this case is a commercial quantity and already this Court



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declined to grant bail to the petitioner and directed the trial Court to complete the trial within 4 months and that 4 months has not yet been expired and without any change in circumstances, the present petition has been filed. Further after inception of the car by the respondent police, the accused themselves handed over the contraband and thereby there was no any search in the car and therefore, Section 42 of the Act is not applicable to this case and hence, he strongly opposed to grant bail to the petitioner.

5. Heard both sides and perused the materials available on record.

6. The petitioner was arrested and remanded to judicial custody on 12.02.2024 and the quantity involved in this case is a commercial quantity. The main contention of the petitioner is that the prosecution agency has failed to follow the procedures laid down under Section 42 of NDPS Act and as per Section 42(I)(d) proviso, *"when the officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such*



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building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief" but failed to record the grounds and also not followed the Section 42(2) of the Act and failed to send the report within 72 hours. In this case, the prosecution agency has intercepted the car and seized the contraband and whether any search was made to attract the proviso of Section 42 of NDPS Act can be decided at the time of trial. Even as per the prosecution case, when they intercepted the car, the accused themselves handed over the contraband and therefore, the very applicability of the Section 42 of NDPS Act itself requires evidence. As far as the judgments relied on by the learned counsel appearing for the petitioner are concerned, it is true that the procedures under Section 42 of NDPS Act are mandatory and if any procedural violations are there, then the petitioner/accused is entitled for bail, however in this case, without any evidence and examination of witnesses, this Court cannot come to the conclusion that there are violations of procedures under Section 42 of NDPS Act and therefore, the contention of the learned counsel appearing for the petitioner is not acceptable. Already this Court dismissed the earlier bail application by



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directing the trial Court to complete the trial within 4 months by order dated 12.08.2024 and the said period of 4 months is not yet completed and there are no any change of circumstances and hence I am not inclined to grant bail to the petitioner.

7. Accordingly, the Criminal Original Petition is dismissed.

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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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P.DHANABAL,J
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To

- 1.The Special Judge, II Additional Special Court for exclusive trial of cases under NDPS Act, Chennai.
- 2.The Public Prosecutor, Madras High Court, Chennai.
3. The Inspector of Police, Pallikaranai PEW, Tambaram City PEW, Chennai.
4. The Superintendent of Police, Central Prison, Puzhal, Chennai.



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