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Crl.M.P.No.18957 of 2023
in Crl.A.No.1432 of 2023

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RESERVED ON : 06.02.2024

PRONOUNCED ON : 28.02.2024

M.NIRMAL KUMAR, J.

The petitioners, who are accused in C.C.No.158 of 2022, were convicted by the trial Court for offences under Sections 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') by judgment dated 23.11.2023 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, each, in default, to undergo six months rigorous imprisonment each. Against their conviction, the petitioners have filed the above appeal along with the miscellaneous petition seeking suspension of sentence and bail.

2.The contention of the learned counsel for petitioner is that the case against them is a foisted case with fabricated documents. The petitioners



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have no role or any nexus with alleged seizure. Further submitted that the mandatory provision under Section 42 and 50 of the NDPS Act has not been complied with. It is also submitted that the provision under Section 55 and 52-A of the NDPS Act has not been complied with during the search and seizure. Further the seizure is only of 186 kgs. of Ganja, which have not been further weighed as per Section 52-A of NDPS Act. No records produced by the prosecution to prove that the ganja seized by the prosecution falls under the definition of ganja under NDPS Act. Further submitted that no confirmation made using the field test kit done hence it is fatal to the case of the prosecution. The prosecution has not proved proper custody of contraband from the date of seizure till the date of production before the Court and to the lab. Hence, the entire seizure stands vitiated. The possibility of tampering is not ruled out.

2.1.Further submitted that Section 57 report produced by the prosecution proves that it is a got up documents since no Court seal or initial



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of the remanding Magistrate is available in the report. Further, PW6 admits that he did not sign the said document immediately only at a later point of time signature of PW6 obtained as seen from the evidence of PW1 & PW6. The trial Court failed to consider the contradictions and discrepancies in the evidence of prosecution witness. In this case, the alleged seizure made in a public place but no public witnesses examined. All the witnesses are police personnels and from the forensic department. The trial Court had losed over the discrepancies and convicted the petitioner. The petitioners are in prison from the date of their arrest, i.e., from 28.09.2021 as under trial prisoners and thereafter as convict prisoner from the date of judgment.

2.3. Further, in support of his arguments, learned counsel relied upon Ex.P1/Information report, Ex.P2/Search notice, Ex.P3/Seizure Memo, Form 91 for production of the seized contraband with delay. In support of his contention, learned counsel relied upon the following judgments:

(i)*Karnali Singh vs. State of Haryana* reported in 2009



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AIR SCW 5265

(ii) *Boota Singh vs. State of Haryana* reported in *AIR OnLine 2021 SC 198*

(iii) *Union of India vs. Mohanlal* reported in *AIR OnLine 2016 SC 606*

(iv) *Simarnjit Singh vs. State of Punjab* in *Crl.A.No.1443 of 2023*

(v) *Gaunter Edwin vs. State of Goa* reported in *AIR 1993 SC 1456*

(vi) *Netram vs. State of Rajasthan* reported in *CDJ 2013 Rajasthan High Court 642*

(vii) *Ramsingh vs. Central Bureau of Narcotics* reported in *2011 AIR SCW 3106*

(viii) *State of Rajasthan vs. Tara Singh* reported in *(2011) 11 SCC 559*

and prayed for granting suspension of sentence to the petitioners.

3.The learned Government Advocate (Crl. Side) filed his counter and submitted that the case of the prosecution is that on 27.09.2021, at about 09.30 hours, when Tr.Siva Ananth, Inspector of Police was in station duty, at



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that time, the respondent police received a secret information about illegal transportation of narcotic substances. After receiving the information, the Inspector of Police along with his police team (i.e.) Tr.Sudhakar, Sub Inspector of Police, Tr.Gunasekaran, Gr.IPC-33268, Tr.Boobalan GrI.PC-37785, Tr.Kannadasan, PC-40694 reached scene of occurrence at Maduravoyil bypass near Puzhal at Odama Nagar Bridge. The Inspector of Police along with police team conducted vehicle check, at that time the accused persons A-1/Puthuraja and A-2/Periyakaruppan, who came in Maruti Alto car bearing registration number AP 35 G 4361, found in possession of 186 Kg (Which was under commercial quantity) with white polythene, 93 number of bundles each consist of 2 kg of dry ganja, examined 2 pockets of dry Ganja each weighing about 25 grams each and sent the same for chemical examination. Further the respondent police arrested A-1 & A-2 and remanded them into judicial custody. Based on the above, a case was registered in T4-Maduravoyal Police Station, Chennai in Crime No.1139 of 2021, U/s.



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8(c), 20(b), (ii), (C), and 29(1) of the NDPS Act 1985 against the accused persons (A1 & A2) on 27.09.2021 by PW1 and he took up for investigation.

3.1. Further submitted that on 27.09.2021, PW1 arrested A-1 and A-2 and recorded their confession statements and produced them before the Learned Judicial Magistrate II, Poonamallee and remanded them into Judicial custody. During the course of investigation, PW1 produced the seized materials along with contrabands before Principal Sessions Judge, Chennai in A.No.516 of 2021 and B.No.214 of 2021, dated 08.10.2021. Thereafter through proper channel, PW1 sent sample of seized contraband to the Forensic Science Lab, Chennai for Chemical Analysis and the report is obtained and confirmed the sample is Ganja vide Nar.No.542 & 633/2021, dated 07.03.2022. After completion of elaborate and detailed investigation, on 31.08.2022 the Investigation Officer have filed a charge sheet against the accused persons [A-1 & A-2] before the Principal Special Judge of EC & NDPS Act, Chennai and the same was taken on file in C.C.No.158 of 2022,



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dated 17.08.2022. The prosecution has proved each and every circumstances pointing to the guilt of the petitioners and proved the case beyond all reasonable doubts.

3.2. He further submitted that in this case PW1 received information from PW2, a Traffic Constable, while coming from his mother-in-law house passing through Madhuravoyal Toll gate, he found Red colour Maruti Alto car bearing Registration No.AP 35 G 4631 with polythene bags neatly packed and taped. Finding them to be unusual, he informed PW1 about the suspicious packets being transported. PW1 on receipt of the same recorded in writing and placed it before the superior and thereafter along with PW3 and other witnesses had gone to the scene of occurrence, intercepted the car, enquired the occupants of the Maruti Alto and enquired them and they were giving contradictory version. Thereafter, search notice was issued and the vehicle was searched and found 186 kgs. of ganja neatly packed in identical size and kept in polythene bags. Thereafter samples were taken,



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accused were arrested, contraband seized and mobile phone as well as the car were seized. Thereafter PW1 produced the accused and seized articles to PW6, who took up investigation, recorded statement of witnesses, sent samples for forensic examination. PW5/Scientific officer had given report/Ex.P12 confirming the seized articles were ganja a Narcotics substances.

3.3. On completion of investigation, charge sheet filed. During trial, PW1 to PW6 examined and Exs.1 to 13 marked and material objects M.O.1 to M.O.23 marked. On the defence side, no witness, no exhibits and no material object marked. Since the petitioners were found in conscious possession, involved in smuggling of commercial quantity of ganja and the trial Court confirmed the same and convicted the petitioners. Hence, the petitioners are not entitled for any bail. He further submitted that the points raised by the petitioners already during trial and the trial Court rejected the same and rightly convicted the petitioner. Hence, strongly opposed for



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granting bail to the petitioners.

4.Considering the submissions made and on perusal of the materials on record, it is seen that petitioners were found in conscious possession of ganja, transporting the same in the Maruti Alto car. PW2 by chance found the polythene bags packed and taped being transported in suspicious manner, informed PW1. Thereafter PW1 informed the superior officer and reached scene of occurrence along with his team. Thereafter, following Section 50 of the NDPS Act, conducted search, arrested accused, seized contraband and other articles, samples were taken, produced the accused before PW6 and conducted further investigation. In this case, 186 kgs of ganja have been seized from the possession of petitioners, which was also confirmed by the Scientific Officer/PW5. The point raised by the petitioners, that Sections 42, 50 and 52A of NDPS Act not followed, had already been raised and considered during trial. The trial Court gave its reasons for rejecting the petitioner's contention not acceptable on the contrary



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evidence and materials against them proved.

5.The appeal is an extension of trial. The points raised by the petitioners can be considered at the time of final hearing of the appeal and are not the grounds for granting suspension of sentence and bail. The Hon'ble Apex Court in the case of *Karnail Singh vs. State of Haryana* reported in (2008) 8 SCC 539, held that compliance with the requirements under Section 42(1) and 42(2) of NDPS Act whether mandatory or directory is a question of fact. Further in the case of *Vijaysinh Chandubha Jadeja vs. State of Gujarat* reported in (2011) 1 SCC 609, it has held that compliance under Section 50 of NDPS Act can be decided during trial. Further in the case of *State of Punjab vs. Baljinder Singh and another* reported in (2019) 10 SCC 473, it has held that apart from requirement under Section 50 of the NDPS Act, if there be any other evidence on record, such materials certainly be looked into. Further in the case of *Baldev Singh vs. State of Haryana* reported in (2015) 17 SCC 554, it has held that evidence of police witnesses cannot be discarded on the



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ground that they belong to police force and interested in the investigation of the desire to see the success of the case. The burden of proof cast upon the accused under Section 35 of the Act can be discharged through different modes. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case. These question of law and facts have to be considered only at the time of final hearing of the case and not at this stage.

6.In view of the same, this Court is not inclined to grant bail to the petitioners. Accordingly, this Criminal Miscellaneous Petition is dismissed.

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Pre-delivery order in
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