



Crl.O.P.No.29267 of 2023

C.V.KARTHIKEYAN, J.

The petitioner/A2 seeks bail in Crime No.216 of 2022 registered by the respondent police for the offences punishable under Sections 8(c), 20(b)(ii) (c), 25 and 29(2)(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The petitioner was arrested and remanded to judicial custody on 30.04.2022.

It is stated that all the three accused, were found in transporting ganja weighing 60 kgs in a Tata Suma Grand Car bearing registration No.TN-07-BF-2381. A1 was in possession of 30 kgs of ganja, the present petitioner/A2 was in possession of 16 kgs of ganja and A3 was in possession of 14 kgs of ganja. All three of them were travelling in the car and the contraband was seized individually from them. When they were arrested they were inside the car.

3. The learned counsel for the petitioner stated that the seized products should be viewed independently and if viewed independently, the quantity of ganja seized from this petitioner would be 16 kgs and that could be termed as intermediate quantity and if it is termed as intermediate quantity the rigour of Section 37 of NDPS Act would not apply. Section 37 of the NDPS Act makes it mandatory for the Court



to examine an application seeking bail on the touch stone of three principles namely that the prosecution should be informed and be heard, that reasonable grounds should be recorded by the Court, that the petitioner has a possibility of being acquitted after trial and there should also be not be any possibility for the petitioner to commit the same offence once again.

4. It is urged by the learned counsel for the petitioner that since the quantity of contraband seized from the petitioner is 16 kgs which is an intermediate quantity, the above stipulations need not be followed by the Court and the petitioner can be granted bail. The other two accused /A1 and A3 are still in custody. It is stated that charge sheet has been filed and as a matter of fact the trial is now pending in C.C.No.343 of 2022 before the Special Court for EC/NDPS Act. The learned counsel for the petitioner also placed reliance on the order of a learned single judge of this Court in Crl.O.P.No.11236 of 2023 dated 08.06.2023, wherein the total quantity of ganja seized was 30 kgs and the Court had separated the quantity seized from each one of the accused. As a matter of fact that application was filed by the first accused and the learned single Judge had actually dismissed the application for bail and had directed the Trial to be completed expeditiously.



5. That order is with respect to the first accused in this FIR. Therefore, this order of the learned single judge will not come to the assistance of the petitioner herein as the application of the first accused was actually dismissed by the learned single Judge. The learned counsel for the petitioner then placed reliance on the Judgment passed by the Bombay High Court on 15.09.2023 in Crl.Bail.Appln.No.3636 of 2022 in the case of ***Sagar Nana Borkar Vs The State of Maharashtra***, wherein, a learned single Judge had examined the bail application of an accused who was found in the possession of 10.319 kgs of ganja and another accused who was found in possession of 11.245 kgs of ganja. The total quantity of ganja exceeded 20 kgs which could be termed as commercial. But the learned single Judge had separated the quantity found in possession of each one of the accused and had granted bail.

6. The said Judgment is not binding at this Court and it does not lay down any legal principle at all. The legal principle which has to be considered is the nature of possession. The possession could be physical possession. In this case physical possession of the petitioner is 16 kgs. But possession could be also constructive possession and also conscious possession. Conscious possession would be when all the accused are found in possession of total quantity of contraband which is commercial in nature and each one of them knew about the possession of other



persons. Then the total quantity will be taken into account. That particular aspect has not been discussed by the learned single Judge of the Bombay High Court and therefore, this Court is not inclined to place reliance on the said judgment.

7.If the theory adopted by the Bombay High Court is to be followed then, if 1100 kgs of contraband are to be brought in, then the number of persons also have to be increased. In the instant case all the 3 persons were found in the car and inside the car the total quantity of ganja seized was 60 kgs and each one of them knew about the total quantity of ganja in the car.

8.In view of the above fact, this Court is not inclined to grant bail to the petitioner. Hence, this Criminal Original petition stands dismissed.

03.01.2024

smn



WEB COPY



Crl.O.P.No.29267 of 2023

C.V.KARTHIKEYAN, J.

smn

Crl.O.P.No.29267 of 2023

03.01.2024