

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
CRIMINAL PETITION No.3654 of 2016

ORDER:

Heard the learned counsel for the petitioner/A.3 and the learned Public Prosecutor.

2. The petitioner/A.3 filed the present application under Section 438 Cr.P.C., seeking release in the event of his arrest in connection with Crime No.29 of 2016 of Ibrahimpatnam Police Station, Vijayawada, Krishna District, registered for the offence punishable under Section 8 (c) read with 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The case of prosecution is that on receipt of information, the Sub-Inspector of police Ibrahimpatnam along with mediators visited the workshop of the petitioner and noticed one lorry bearing No.AP-16-TW-1247 covered with violet colour turban in an open place at Hyderabad Engineering Workshop. When questioned about parking of the said lorry, the Supervisor held that on the instructions of the petitioner only, the lorry was allowed into the workshop premises. When they searched the lorry, the Investigating Agency found 3000 kgs., of Ganja in the said lorry. Basing on these allegations, the present case came to be registered.

4. Learned counsel for the petitioner submits that the offence alleged against the petitioner is false and that the petitioner is not aware about the contents in the lorry.

5. Learned Public Prosecutor opposed the same contending that the petitioner is aware about the contents in the lorry and on the instructions of the petitioner only the lorry was allowed to enter into the workshop premises.

6. In order to appreciate the rival contentions, it would be appropriate to refer to the mediators report. A perusal of the mediators report would show that on the date of incident i.e., on 18.01.2016, while the watchman was in the workshop, at about 1:00 or 2:00 p.m., lorry bearing No.AP-16-TW-1247 stopped at the gate, two persons came out and opened the gate in order to park the lorry at workshop premises. Immediately, the watchman telephoned to the owner i.e., the petitioner herein from cell phone 9989335761 to cell No.9989212233 and informed about parking of lorry in the workshop premises. The petitioner talked with lorry driver through the cell phone and instructed the watchman to allow parking of the lorry in the workshop premises. From the statement of the watchman, who is an employee of the petitioner, it is clear that everything happened to the knowledge of the petitioner only and on his instructions only the lorry was allowed to enter into the workshop premises. Therefore, it cannot be said that the petitioner has no knowledge about parking of lorry in the workshop premises.

7. [In Madan Lal v. State of H. P.](#)^[1] the Apex Court while dealing with the issue of conscious possession, held as under:

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. [Section 35](#) of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of [Section 54](#) where also presumption is available to be drawn from possession of illicit articles.”

8. Having regard to the facts and circumstances referred to above, I am not inclined to grant bail to the petitioner. However, the petitioner shall surrender and move an application for regular bail, in which event, the same shall be dealt with in accordance with law.

9. With the above direction, the Criminal Petition is disposed of.

C.PRABHAKAR KUMAR, J

MARCH 23, 2016.

YVL

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.3654 of 2016

Date: 23.03.2016

YVL

[\[1\]](#) (2003) 7 SCC 465