

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No. 15160 of 2016

ORDER:

Vide present Criminal Petition, the petitioner/A.2 seeks a direction thereby to enlarge him on bail in Crime No. 64 of 2016 registered on the file of Station House Officer, Police Station, G.Madugula, Visakhapatnam, for the offences punishable under Section 20(b)(ii)(c) read with Section 8(c) of NDPS Act.

The case of prosecution is that based on the information received about illegal dumping and transportation of Ganja in Kappalgedda village, G.Maugula Mandal, after issuing requisition letters to the marginally noted mediators, the police reached the scene of offence. By way of **keeping** one person on front side and second person at back door, the policy party surrounded the house of accused and searched. On observing the same, six persons tried to escape from the policy party. In that process, two accused ran away and four persons were arrested and remanded. At the scene of offence, the police seized 400 Kgs of Ganja from the possession of the accused, which is a commercial quantity.

Learned Counsel appearing on behalf of the petitioner submits that petitioner is an innocent person and not involved in the alleged offence. The story narrated by the de facto complainant is only concocted for the purpose of the present case. More over there is no any eye witness for the alleged incident and

the police have dragged the petitioner into the present false and frivolous case for their statistical purpose. The learned Counsel relied on the decision of the Bombay High Court in *ASHAK HUSSAIN ALLAH DETHA @ SIDDIQUE vs. ASSISTANT COLLECTOR OF CUSTOMS, BOMBAY* {1990 LawSuit (Bom) 3}, wherein it was held as follows:

“My conclusion is that the High Court's power to release the accused suspected of having committed an offence under the N.D.P.S. Act is not limited by section 439 of the Code of Criminal procedure. The summary of the reasons for this conclusion is as under :---

‘The Court’ referred to in section 37 of the N.D.P.S. Act, being a legislative substitute for the “Magistrate of the First Class” occurring in the repealed section 36 is not intended to include the High Court. Secondly, the Parliament has identified the Special Court with the Court of the Magistrate whose power to grant bail is restricted under section 437 of the Code of Criminal Procedure. The restriction of the power of release on bail created by section 37 of the N.D.P.S. Act being similar to that under section 437 of the Code of Criminal Procedure, the Parliament did not intend to include High Court within the words “Special Court”. Thirdly, section 37(2) of the N.D.P.S. Act has conceived the limitations on granting bail specified in section 37(1)(b), as “in addition to the limitations under the Code of Criminal Procedure”. Therefore, in the Parliament's conception, “the Court” is the Court whose power to grant bail is limited by the Code of Criminal Procedure. The High Court, not being a

Court of such restricted power to grant bail, is not "the Court" conceived by section 37 of the N.D.P.S. Act. Fourthly, the construction of the words "the Court" used in section 37 of the N.D.P.S. Act deprives the High Court of its established jurisdiction. There are no words in the N.D.P.S. Act which bring out the intention to take away the jurisdiction of the High Court under section 439 of Code of Criminal Procedure."

There is no dispute that this Court has power to grant anticipatory bail while exercising power under Section 438 Cr.P.C. and regular bail while exercising power under Sections 437 and 439 Cr.P.C. The fact remains in the present case is that the petitioner herein along with other co accused persons is engaged in trading Ganja. The police have seized 400 Kgs of Ganja from the possession of the petitioner and other co accused on 23.09.2016 while searching their house. The petitioner was arrested on 23.09.2016 itself. As the Ganja seized is commercial quantity, Section 37 of the NDPS Act comes into play. While granting bail, the Court has to record that the petitioner is likely to be acquitted and he/she shall not repeat the same offence while on bail. This opinion should be recorded when the accused person is an innocent, he/she should not directly connected with the offence and thereby apparently the Court feel that he/she likely to be acquitted since the accused should not indulge such illegal activities and will not commit the same offence while on bail. Whereas in the present case, 400 Kgs of Ganja was seized from the possession of the petitioner and other co accused, which

being a commercial quantity, Section 37 of NDPS Act comes into play. Keeping in view the quantity of ganja seized from the possession of the petitioner, I am not inclined to grant bail.

The Criminal Petition is accordingly dismissed. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE SURESH KUMAR KAIT

DATED 01st November, 2016.
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