

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No. 14816 OF 2016

ORDER:

Vide the present petition, the petitioners/A.4 and A.5 seeks a direction, thereby enlarging them on bail pending investigation, enquiry and trial in Crime No.3 of 2016-17 of Prohibition and Excise Police Station, Rajahmundry, East Godavari District, registered for the offence punishable under Section 8(c) r/w Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. The case of the prosecution is that on 04.04.2016, the Prohibition and Excise Inspector of Rajahmundry North, along with his staff, conducted a route watch on National Highway No.16 towards Kovvuru from Konthamuru village and found a Scorpio vehicle. The driver of the said car escaped and two persons travelling were apprehended. On searching the said vehicle bearing registration No.AP 31X 6358, found 60 packets of ganja, each packet weighed 2 kgs totaling 120 kgs.

3. The respondent/police in Crime No.3 of 2016-17 of Prohibition and Excise Police Station, Rajahmundry, recorded confessional statements of the accused. On arresting A.3 to A.5, it is revealed and found 112 kgs of ganja stored in a house of Adarshanagar, Konthamuru village, Limits of Rajahmundry Rural Mandal. A separate mediators report was drafted by the time of seizure of 120 kgs of ganja and arrest of A.3 to A.5. Thus, the total contraband seized was 232 kgs of ganja.

4. Learned counsel appearing on behalf of the petitioners submits that the petitioners were arrested by the respondent/police in a house and the alleged contraband was seized from the said house. Hence, the respondent/police have not followed the guidelines and the principles of Sections 42 and 50 of the Act, while making arrest, search and seizure of the contraband.

5. Learned counsel further submits that the vehicle noted above was not a public vehicle, however, if anything seized from the personal/private vehicle or from a dwelling house, then Section 50 of the NDPS Act comes in the play. In such a situation, any recovery effected by the police is to be considered as the recovery effected from the person of the accused. In support of his argument, learned counsel for the petitioners has relied upon a decision of the Supreme Court in **State of Rajasthan v. Jag Raj Singh** decided on 29.06.2016 in Criminal Appeal No.1233 of 2006.

6. After going through the said judgment, the issue before the Supreme Court in said case was whether the High Court committed error in acquitting the accused and whether there was sufficient material to support the findings of the High Court regarding non-compliance of Sections 42(1) and 42(2) and whether Section 43 was applicable in such case, and whether recovery as claimed by the prosecution was supported by the evidence on record and the material and samples were properly sealed. Some other related issues were also there in addition to above.

7. In the case on hand, charge sheet has been filed and pending for consideration on charges. The issue raised by the learned counsel for the

petitioners before this Court cannot be considered for the purpose of enlarging the petitioners on bail. However, the petitioners are at liberty, if they have a case, to argue before the trial Court at the time of framing the charges. The decision, relied upon by the learned counsel for the petitioners, is not relevant in the present case.

8. Keeping in view the fact that the huge amount of the ganja recovered from the petitioners, I am not inclined to grant bail to the petitioners.

9. This Criminal Petition is, accordingly, dismissed. Miscellaneous petitions pending in this petition, if any, shall stand closed.



SURESH KUMAR KAIT, J

DATE : 24.10.2016

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