

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12231 OF 2016

ORDER:

The present Criminal Petition is filed by the petitioners/A.1 and A.2 under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in connection with Crime No.83 of 2016 of Yerpedu Police Station, Chittoor District, registered for the offences punishable under Sections 20B(1) and 22 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 24.06.2016 at 4:10 P.M., at Lalitha Nagar Plots road turning, on Srikalahasti-Tirupathi road, Yerpedu Mandal, the Inspector of Police, Renigunta Rural Circle, arrested A.1 and A.2 while they were transporting 25 packets of Ganja weighing about 50 Kgs., worth Rs.1,15,000/-, from Anakapalle to Hoskot in Indica Car bearing No.AP 21 N 4213 belonging to A.1 and driven by A.2. They are alleged to have purchased the same at Anakapalle, Visakhapatnam Rural from A.3 with the assistant of A.4. After complying with all the requirements, the Inspector of Police seized the Ganja along with Car. Basing on the said search and seizure, the present crime came to be registered.

3. Learned counsel for the petitioner submits that the allegations in the report are all false; that A.1 is physically disabled person and

A.2 is only a driver of the vehicle, and has nothing to do with the offences alleged.

4. Learned Public Prosecutor opposed the same.

5. A perusal of the averments in the First Information Report and also the remand report would show that these petitioners were apprehended while they were proceeding in a vehicle. At that time, police intercepted the vehicle and seized 50 Kgs., of Ganja, which is a commercial quantity.

6. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. Therefore the power to grant bail under any of the provisions of Cr.P.C. should necessarily be subject to the conditions mentioned in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 postulates the conditions or requirements for grant of bail in case of a person accused of an offence punishable for a term of imprisonment of five years or more under the Narcotic Drugs and Psychotropic Substances Act, 1985. It also states that in such cases the Public Prosecutor should be given an opportunity to oppose the

application and if the Public Prosecutor opposes the application the Court cannot grant bail unless it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on bail. Bail cannot be granted on any other ground in view of the limitation specified in clause (b) of sub-Section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. (*Narcotics Control Bureau v. Krishan Lal and others*¹).

8. Admittedly, in the instant case, the petitioners are charged for the offences punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 which are punishable with imprisonment of more than five years. Therefore, the petitioners' application herein is governed by limitations specified in clause (b) of sub-Section (1) of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985, in which there is no exception for a woman or a physically handicapped person, if they are found to be in possession of narcotic substance. Therefore, the argument of the learned counsel for the petitioners that the petitioner/A.1 is physically challenged person and A.2 is only a driver cannot be a basis for grant of bail. The petitioners have to make out a *prima facie* case proving their innocence in the commission of offence. Since the grounds raised by the learned counsel for the petitioners do not satisfy the rigour of

¹ (1991) SCR (1) 139

Section 37 of the NDPS Act, I am not inclined to grant bail to the petitioners.

9. Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Date:29.08.2016
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