

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.5060 of 2016

ORDER :

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent.

2. The present Criminal Petition under Sections 437 and 439 of Cr.P.C., is filed by the petitioner/A-1 seeking to enlarge him on bail in Crime No.169 of 2015 of Annavaram Police Station, East Godavari District, registered for an offence punishable under Section 8(c) read with Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

3. A charge sheet came to be filed against the petitioner/A-1 and another alleging that on 21.09.2015 at 12.00 noon, the Inspector of Police, Prathipadu, received credible information about the transportation of Ganja. As such he secured the mediators and other staff, proceeded to outskirts of Annavaram on National Highway and started vehicle checking. In the meantime, one Eicher Van bearing No.AP 31Y 1278 was stopped by the police. They found A-2 in the driver's seat and A-1 by the side of A-2. After complying with the mandatory requirements, police searched the van and found 12 gunny bags containing 316 kgs of Ganja, which was seized under a panchanama and A-1 and A-2 were arrested. Basing on the search and seizure, the above case came to be registered.

4. Learned counsel for the petitioner mainly submits that since the entire investigation is over and charge sheet is filed, the request of the petitioner may be considered.

5. On the other hand, learned Public Prosecutor opposed the application contending that since the quantity of Ganja seized is commercial quantity, the request of the petitioner cannot be considered.

6. A reading of the averments in the charge sheet would disclose that on the date of incident, about 316 kgs of Ganja was seized while the same was being transported by A-1 and A-2 in Eicher Van bearing No.AP 31Y 1278. It is not the case of the petitioner that he was not aware of transportation of Ganja in the said vehicle.

7. In **MADAN LAL Vs. 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. In view of the judgment of the Apex Court referred to above; having regard to Section 37 of the NDPS Act and since the petitioner/A-1 was not able to prove that *prima facie* he is innocent of the offence alleged against him, his request cannot be considered.

9. Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Date: 20th April, 2016

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