

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.13549 of 2016

ORDER:

The petitioners, who are A-2 and A-3, in NDPS S.C.No.141 of 2016 on the file of the I Additional District Judge, East Godavri District at Rajahmundry, which arose out of Crime No.16 of 2016 of Y.Ramavaram Police Station, filed the present application under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in the above case registered for the offences punishable under Sections 8(c) read with 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act 1985 (for short "the Act"), The petitioners were arrested on 11.06.2016 and since then they are in Jail.

2. The allegations in the charge-sheet filed against the accused are as under :-

On receipt of reliable informaiton about illegal transporation of Ganja towards Y.Ramavaram village, L.W.16-Inspector of Police assisted by L.W.15-the Sub Inspector of Policd and other staff members and mediators while conducting vehicle check intercepted on the Hero Passion Pro motorcycle bearing No.M.H.28-AD-3622 followed by one white colored Bolero vehicle

bearing No.M.H.28-AD-3402. On noticing the police party, the inmates and the rider of the motorcycle tried to escape, but, however, they were apprehended. When questioned, they replied in Hindi language and hence L.W.16 summoned CRPF constables L.Ws.7 and 8 for translation, wherein the accused admitted their guilt. A perusal of the allegations made in the charge-sheet show that on 06.06.2016 A-1 along with A-2 to A-4 started in a Bolero vehicle came to Nizamabad, went to the hosue of their relative and chatted about the marriage. Later A-1 instructed A-2 and A-3 to visit Rajahmundry on train and take the motorcycle Hero Passion pro bearing No.MH.28.AD.3622 which was parked at Rajahmundry railway station and instructed them to go Kongapakala, Darakonda village to secure Ganja. Accordingly a sum of Rs.2 lakhs was given to A-1. On 08.06.2016 A-1 and A-4 started from Nizamabad, visited Kongapakalu village via Bhadrachalam and purchased 588 kgs of Ganja worth Rs.5,88,000/- and placed the same in special rack prepared on the back side of the vehicle. On 11.06.2016 at about 5.00 a.m., A-1 along with A-4 started in a Bolero vehicle while A-2 and A-3 started on passion pro motorcycle. On their way, the police intercepted and checked the vehicles. The search of the vehicles revealed seizure of

558 kgs of Ganja apart from taking the accused into custody. Basing on these allegations, the above report came to be registered.

3. Learned counsel for the petitioners mainly submits that the petitioners are innocent of the offences alleged against them and no incriminating material is recovered from their possession. He submits that the petitioners, who belongs to Maharashtra state came to Nizamabad for a marriage alliance and thereafter went to Rajahmundry to attend some work. It is their case that since no incriminating material is recovered from the possession of the petitioners.

4. The same is opposed by the learned Additional Public Prosecutor contending that since the petitioners are in conscious possession of huge quantity of Ganja they are not entitled for any relief.

5. As seen from the averments in the charge-sheet the petitioners are resident of Maharashtra. Even assuming for the sake of argument that they have visited Nizamabad for the purpose of some marriage alliance, no explanation is given as to why the accused visited Rajahmundry. Apart from that A-1 and A-4, who are found travelling in a Bolero vehicle with 588 Kgs of Ganja, are closely known to these petitioners. It appears to be a case

where these petitioners were trying to escort the vehicle or divert the attention of the police by acting as pilots. It may be true that no Ganja was recovered from the possession of the petitioners, but from the facts and circumstances of the case, it can be said that the petitioners are conscious about the possession of Ganja in a Bolero vehicle and with regard to transportation of the same, all the four accused are said to be parties.

6. In **Ram Singh v. Central Bureau of Narcotics**, the Apex Court while dealing with a bail application filed under the provisions of the N.D.P.S. Act observed as under :-

"24. It is trite that to hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession. Possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control."

7. Similarly, in **Kulwinder Singh and another v. State of Punjab**, the Apex Court while dealing with the situation where the lorry containing 4180 kgs of poppy husk was being transported in 110 bags, observed and held as under :-

"13. THE next ground of assail pertains to factum of conscious possession. The submission of the learned counsel for the appellants is that they were only moving in the truck and had no knowledge what the bags contained. As the evidence on record would show, two of the accused persons were sitting by the side of the driver and the rest of the accused persons were sitting on the body of the truck. 110 bags of poppy husk weighing 4180 kgs. were in the truck. At the instance of the police when the truck was stopped, had the accused -appellants no knowledge about the contents of the bags, they would not have run away from the spot. That apart, they absconded for few days from their village. They have not taken the plea that they were taking any lift in the truck and their presence in the truck has been proven by the prosecution. It is not a small bag lying in the corner of the truck that the accused -appellants can advance the plea that they were not aware of it. In the instant case, there were 110 bags of poppy husk being carried in the truck. Their presence which has been proven, establishes their control over the bags. The circumstances clearly establish that they were aware of the poppy husk inside the bags and in such a situation, it is difficult to accept that they were not in conscious possession of the said articles."

8. Applying the ration laid down in the judgment referred to above to the case on hand, it is clear that if really the petitioners are innocent of the offences alleged against them and that they were not aware about transportation of Ganja in the Bolero van, they would not have made an attempt to abscond or would have given a proper explanation, moreover, all of them are related to each other. As such it can be said that the petitioners are in conscious possession. In view of the above, I am not inclined to consider the request of the petitioners.

9. Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:22.09.2016

GM

