

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.13998 of 2016

ORDER:

1) The petitioner, who is accused No.1, filed the present Criminal Petition, under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in S.C.No.40 of 2016 on the file of the I Additional District and Sessions Judge, Rajahmundry, arising out of Crime No.14 of 2016 of Kotananduru Police Station, East Godavari District. A charge sheet came to be filed against the petitioner and another for the offences punishable under Section 8 (c) read with 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "The NDPS Act").

2) The case of the prosecution is that on 14.02.2016 on receipt of credible information, the Inspector of Police along with his staff rushed to Talupulamma thalli temple, situated at the outskirts of Kotananduru and while conducting vehicle check found accused Nos.1 and 2 coming from Narsipatnam side in a car bearing No. MH 04 AR 2928 and on seeing the police party, the accused tried to escape but the Inspector of Police managed to surround them with the assistance of his staff and after serving notice to the accused and after obtaining their consent seized five packets of ganja each packet containing 2 kgs. from accused No.1 and five packets of ganja each packet containing 2 kgs. from accused No.2 and also seized 40 packets of ganja each packet containing 2 kgs. from the dickey of the car in which the accused were travelling. Basing on search and seizure a case in Crime No.14 of 2016 of Kotananduru Police Station came to be registered. After completion of investigation, a charge sheet came to be filed in the month of March, 2016.

3) Heard learned counsel for the petitioner and Public Prosecutor appearing for the respondent-State.

4) Learned counsel for the petitioner mainly submits that even accepting the allegations in the charge sheet to be true the petitioner could not be convicted since the prosecution failed to comply with the mandatory requirements of Sections 42 and 50 of the Act. He submits that though these points were urged before this Court in earlier round of litigation the same were not considered. Hence, the present application is filed.

5) Learned Public Prosecutor opposed the application contending that in view of earlier order passed by this Court and in the absence of any changed circumstances, the petitioner is not entitled for bail.

6) It is to be noted that earlier the petitioner filed Criminal Petition No.7461 of 2016 before this Court, which was rejected on 10.06.2016, on the ground that the petitioner and another were found in possession of 100 kgs. of ganja which is a commercial quantity. Though the learned counsel for the petitioner contends that the plea of violation of Sections 42 and 50 of the Act were raised before this Court earlier, but a perusal of the memorandum of the petitioner filed before this Court does not anywhere indicate the same. The only ground urged is that since each of the accused was found in possession of 10 kgs. of ganja which is less than commercial quantity, their request may be considered. It was further urged that since the entire investigation is over and charge sheet is filed, there is no embargo under Section 37 of the Act to consider the request of the petitioner.

7) Learned counsel for the petitioner submits that in view of the order passed by this Court and as charge sheet is filed he is forced to

move the application before this Court urging the violation of Sections 42 and 50. But it is to be noted that earlier petition was dismissed by this Court after filing of charge sheet.

8) It is also to be noted that the ground which is raised was never raised earlier before this Court or even before the Sessions Court in the earlier round of litigation. Learned Public Prosecutor is not in a position to inform the Court the stage of the sessions case.

9) Having regard to the above, the present Criminal Petition is disposed of, permitting the petitioner to file fresh application before the sessions Court raising the legal grounds, in which event the same shall be dealt with in accordance with law, at the earliest.

28.09.2016
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JUSTICE C. PRAVEEN KUMAR

