

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL PETITION No.7238 OF 2016

ORDER:

The petitioners - A3 and A4, who are charged along with other accused for the offence under Section 8 (c) read with 20 (b) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), filed the instant bail application under Sections 437 and 439 Cr.P.C.

As per prosecution, on 03.01.2016, the Sub-Inspector of Police, Jaggampeta Police Station and his staff intercepted the accused at Ananthalakshmi Engineering Works, which is in the outskirts of Ramavaram Village, Jaggampeta Mandal, and found the accused transporting 240 Kgs. of ganja in a van bearing registration No.AP-20Y-0129 and seized the same and arrested them.

Heard.

Learned counsel for the petitioners while denying the offence submitted that the petitioners are only drivers and they absolutely had no knowledge about the alleged transportation of contraband ganja in the van and further, they have been in custody since 03.01.2016 and in that view of the matter, bail may be granted to them.

Learned Public Prosecutor opposed the bail application and submitted that charge sheet is not filed.

A perusal of the remand report would show that the petitioners were drivers in the crime vehicle working

under A2 and the said vehicle was used for transporting contraband ganja seized by the police. The remand report *prima facie* shows that the petitioners had knowledge about the illegal transportation of the contraband ganja and so in view of their involvement in the alleged offence, bail cannot be granted to them. Further, it is a case of seizure of contraband ganja of 240 Kgs., which is a commercial quantity. Hence, due regard has to be had for Section 37 of the NDPS Act while dealing with the bail application. It is true that the petitioners have been in custody for more than 90 days and charge sheet is reportedly not filed so far. However, considering the fact that Section 167 Cr.P.C. has no prevalence over Section 37 of the NDPS Act, which is a special legislation, as laid down in **Banka Das and others v. State of Orissa**^[1]. Hence, mere custody of the petitioners exceeding the period mentioned in Section 167 Cr.P.C. cannot be taken into consideration for according them bail.

In view of the gravity of the offence and investigation being pending, it is not a fit case to grant bail to the petitioners.

Accordingly, the petition is dismissed.

U. DURGA PRASAD RAO, J

May 19, 2016
MD/KH

^[1] 1993 CrLJ. 442 (FB)