

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12415 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.59 of 2015 on the file of the Metropolitan Sessions Judge-cum-Special Judge for trial of cases under N.D.P.S Act, Cyberabad, L.B.Nagar.

2) The case of the prosecution is that on receipt of reliable information about trafficking of narcotic substance, on 24.05.2015 at 5.30 p.m., the NCB Officers proceeded to Reliance mart, situated opposite to Kamineni Hospital, L.B.Nagar along with two mediators and apprehended the petitioner and accused No.2. On search they found two polythene bags containing 0.538 kg. of heroin in one bag and 0.540 kg. of heroin in the second bag. Both the accused confessed about the commission of offence. After complying with the mandatory requirements, the NCB officials seized the contraband under a cover of panchanama. Basing on the seizure and confession the above case came to be registered.

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

4) Learned counsel for the petitioner mainly submits that the authorities erred in relying upon the statement made under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") since the same was not voluntary and it

is retracted. He further submits that the procedure contemplated under section 50 of the Act is not followed and as such the petitioner is entitled for bail. He also submits that the Chemical Examiner Report is silent as to the percentage of the pure content of the drug thereby rendering the consequential report irrelevant to qualify that the recovered drug falls in column Nos.5 or 6 of the 2001 notification. Hence he submits that as the quantity alleged to have been seized does not constitute commercial quantity, the request of the petitioner may be considered..

5) When a substance would be a commercial quantity or small quantity, the counsel for the petitioner, in ground No.k of the petition filed in support of the bail petition, gave illustration to show that the quantity of heroin seized cannot be a commercial quantity. Various other grounds touching the merits and de-merits of the case were raised by the learned counsel for the petitioner.

6) A counter came to be filed by the respondents opposing the same, contending that the petitioner committed a heinous crime against society. It is urged that if the petitioner is released on bail, there is every chance of he tampering with evidence and may avoid the process of law. It is further stated that there is a statutory embargo in Section 37 of the NDPS Act for granting bail to the accused. He submits that as per the notification, the commercial quantity of heroin is 250 gms, but the seized contraband from two persons is around 1.056 kgs. which is more than the commercial quantity. Learned counsel for the respondent further submits that summons under Section 67 of the

Act were served on accused Nos.1 and 2 on 24.05.2015 and accordingly on the said date voluntary statements were recorded in which both of them confessed about their involvement in transportation of 1.056 kgs. of heroin. Pursuant to the said statement the accused were arrested.

7) It is to be noted that earlier the petitioner herein filed CrI.P.Nos.1427 of 2015, 6730 of 2015 and 9259 of 2015 which were rejected on 07.07.2015, 21.07.2015 and 29.09.2015 respectively. The bail applications which were filed before this Court were rejected while investigation was in progress. A reading of the impugned orders passed by the trial Court as well as this Court would show that the bail applications came to be rejected in view of the statement made under Section 67 of the Act. It appears that after filing of the complaint in the month of November, 2015, no application for bail was moved before the trial Court raising the issues which are now sought to be contested.

8) Hence, without deciding the case on merits as urged, the present criminal petition is disposed of giving liberty to the petitioner to move before the trial Court raising all the grounds which are now urged before this Court, in which event the same shall be decided in accordance with law.

JUSTICE C. PRAVEEN KUMAR

12.09.2016
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