

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CRIMINAL PETITION No.10165 of 2016
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ORDER:

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The petitioner, who is A-1, in Crime No.20 of 2016 of Kothakota Police Station, Visakhapatnam District, preferred the present application under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in the above crime registered for the offence punishable under Sections 20(b) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"). The petitioner is in Jail since 27.04.2016.

The averments in the report are as under :-

On receipt of credible information, the Investigating Officer along with mediators reached Ajeyapuram village at 6.00 a.m. and found four persons coming from Nittamamidi hill area with three horses carrying six gunny bags. On seeing the police, all the four persons tried to escape leaving their horses with six gunny bags. On that the Investigating Officer along with his staff chased and apprehended them. When questioned, the accused are alleged to have disclosed their names separately and also about the material, which was being transported on horses. The first person was questioned about the same and he disclosed about the commission of the offence and transportation of about 130 kgs of Ganja. Similarly all the remaining three accused who have questioned separately confessed about the transportation of Ganja. Basing on the said search and seizure, the above crime came to be registered.

Learned counsel for the petitioner mainly submits that the allegations made in the report are all false and invented for the purpose of this case. According to him, the petitioners are entitled for the relief since the authorities failed to comply with Section 50 of the

NDPS Act. The same is opposed by the learned Additional Public Prosecutor contending that question of violating Section 50 of the NDPS Act would not arise as no contraband was seized from the person and no search of the person was undertaken by the Gazetted Officer.

In order to appreciate the same, it would be useful to refer to the contents of the remand Case Diary. When questioned as to whether they would be liked to be searched by a Gazetted Officer, the accused are alleged to have stated that they have no objection to be checked by any Gazetted Officer. A notice under Section 50 of the NDPS Act was served on the accused and then the officer took A-1 to A-4 with the seized material to the house of one G.Prakasasrao, M.E.O./Gazetted Officer with a request to search the person and the gunny bags. The Gazetted Officer is alleged to have searched six gunny bags and found 15 packets each in three gunny bags and five packets each in two gunny bags and loose Ganja in one gunny bag. He got opened the packets and loose gunny bag and found that packets wrapped with brown paper and tied with plastic thread and total 55 packets and 20 kgs of loose Ganja in a gunny bag. Then he opened the packets and found that there were Ganja leaves, buds, flowers and stems. After weighing the same, the Gazetted Officer asked the details of the said persons, who discloses their names and addresses. The Gazetted Officer is alleged to have taken samples of 50 grams of Ganja in triplicate, pasted slips, signed on it and also obtained the signatures of the accused, mediators on the said slips for sending them to Chemical Examiner. Thereafter a search and seizure report was drafted and brought the accused along with seizure report were brought to the police station.

From a reading of the above, it is clear that the accused were asked whether they would be liked to be searched before a Gazetted Officer and when they expressed no objection for the same, the raid

party took them to a Gazetted Officer, who is alleged to have searched only bags. The remand report as well as panchanama prepared is silent as to the personal search of the accused. That being the position whether it requires compliance of Section 50 of the NDPS Act. In **State of Rajasthan v. Parmanand and another**^[1], the Apex Court after referring to the conclusions drawn in **State of Punjab v. Baldev Singh**^[2], the judgment in **Kalema Tumba v. State of Maharashtra**^[3] and also the judgment of **State of Himachal Pradesh v. Pawan Kumar**^[4] and **Dilip v. State of M.P.**^[5] and **Union of India v. Shah Alam**^[6], held that if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.

In the instant case, the facts disclose that though the accused were informed about their right of being searched before a nearest Gazetted Officer, but no search of the person of the accused was conducted. The remand report clearly discloses that the search was only with regard to bags, which were carried on the horses.

In view of the judgments referred to above, it has to be held that Section 50 of the NDPS Act will have application and there is no violation of the same. As the Ganja seized from the accused is commercial quantity, I see no reason to allow the present petition.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:12.08.2016
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[\[1\]](#) (2014)5 Supreme Court Cases 345

[\[2\]](#) (1999)6 SCC 172

[\[3\]](#) (1999)8 SCC 257

[\[4\]](#) (2005)4 SCC 350

[\[5\]](#) (2007)1 SCC 450

[\[6\]](#) (2009)16 SCC 644