

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.4361 of 2016

ORDER :

The petitioner, who is accused No.1, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in Crime No.18 of 2016 of Ananthagiri Police Station, Visakhapatnam District, registered for an offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The averments in the remand report would show that on 17.02.2016 at about 4.00 p.m. on receipt of credible information, the Inspector of Police and his staff along with the mediators proceeded to main road, Borra Gate Valasa Village and while they were conducting vehicle check noticed one motor cycle bearing No.AP 31 CK 7595, another motor cycle bearing No. AP CR 2885 and Tata Safari vehicle bearing No. AP 09 AG 6666 coming from Konapuram Side. The riders of the motor cycles and the driver of safari vehicle stopped their vehicles near the check post and tried to skulk from there. With the assistance of staff, the police apprehended the driver of Tata Safari Vehicle, but however the riders of the motor cycle escaped from the scene. The driver of the Tata Safari Vehicle disclosed about he doing ganja business along with accused Nos.2 and 3. He further confessed that the ganja was purchased in Orissa and the same is being transported along with accused Nos.2 and 3 to Gopalapuram. After complying with the statutory requirements the vehicle was searched and about 120 kgs. of ganja packed in 60 packets kept in six plastic bags were seized. Basing on the said search and seizure the above case came to be registered.

Heard learned counsel for the petitioner and Additional Public

Prosecutor appearing for the respondent-State.

Learned counsel for the petitioner submits that the petitioner is only a driver of the Safari vehicle and as such he has nothing to do with the commission of the offence. He took the Court through the order releasing accused Nos.2 and 3 on anticipatory bail by the Sessions Court, wherein the Court expressed doubt about the involvement of accused Nos.2 and 3.

Learned Additional Public Prosecutor opposed the application and submits that since 120 kgs. of ganja was seized from the vehicle in which the petitioner was travelling, his request cannot be considered.

A perusal of the material on record would show that the petitioner was caught redhanded while he was transporting 120 kgs., of ganja and since the entire quantity of ganja is packed in 60 packets and kept in 6 plastic bags it cannot be said that the petitioner is not aware about the transportation of ganja.

[In Madan Lal v. State of H. P.](#)^[1] the Apex Court dealing with the issue of conscious possession, held as under:

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. [Section 35](#) of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of [Section 54](#) where also presumption is available to be drawn from possession of illicit articles.”

It is true that accused Nos.2 and 3 were released on bail, but a perusal of the order releasing accused Nos.2 and 3 would show that they were released on anticipatory bail since no ganja was seized from their possession and the case against them was based on the

confession of co-accused.

Having regard to the said circumstances of the case, it cannot be said that no *prima facie* case is made out against the petitioner. In view of the above, I am not inclined to grant bail to the petitioner.

Accordingly, the petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

07.04.2016

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[\[1\]](#) (2003) 7 SCC 465