

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.13539 of 2016

ORDER:

The petitioners, who are accused Nos.2 and 3, filed the present application under Sections 437 and 439 of the Code of the Criminal Procedure (Cr.P.C.), seeking enlargement on bail in crime No.251 of 2016 of P.M.Palem Police Station, Visakhapatnam, registered for the offence punishable under Section 20 (b) (ii) of NDPS Act.

The case of the Prosecution is that on 16.07.2016 on receipt of credible information about illegal transportation of ganja, the Police proceeded to Dr.No.C-83, RTC colony, Madhurawada, Visakhapatnam, where the Police intercepted one car bearing No.AP35-AE-4319 in which three persons were found unloading the plastic bags from the car. On seeing the Police, the said persons tried to escape. But, the Police chased and apprehended them. On enquiry, they revealed their identity. On checking, the Police found 61 kgs. of ganja in three plastic bags. Basing on the said search and seizure, the present crime came to be registered, after compliance of mandatory provisions of the Act.

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent-State.

The learned counsel for the petitioners submits that the petitioners are in jail from 16.07.2016 and as the investigating agency failed to comply with Section 50 of the NDPS Act, seeks bail. The same is opposed by the learned Additional Public Prosecutor contending that the question of compliance with Section 50 of NDPS Act would not arise as there is no personal search on the accused.

In ***State of Rajasthan v. Parmanand and another***¹ the Apex Court 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 present case, a reading of the mediators report does not reveal personal search of the accused. The contraband was recovered from the vehicle i.e. car bearing No.APAP35-AE-4319. Hence, the argument of the learned counsel for the petitioners that the mandatory requirement of Section 50 of the NDPS Act was not followed cannot be considered. Insofar as the plea that the petitioners are in jail from 16.07.2016, the same cannot be a ground to release the petitioners since the ganja seized is a commercial quantity. Hence, I see no ground to consider the request of the petitioners.

Therefore, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

27.09.2016
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¹ (2014) 5 SCC 345