

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No. 15180 of 2016

ORDER:

Vide present Criminal Petition, the petitioner/A.2 seeks a direction thereby to enlarge him on bail in NSC.No.32 of 2015-- Crime No. 98 of 2014 registered on the file of Station House Officer, Police Station, V.Madugula, Visakhapatnam District, for the offences punishable under Section 20(b)(ii)(c) read with Section 8 (c) of NDPC Act.

The case of prosecution is that based on the information received about the illegal transportation of Ganja from Paderu side to Visakhapatnam, immediately the police along with staff and two mediators reached at Garikinabada village and found one van coming from Paderu. When the accused witness the police, they stopped the van and ran away from the spot; however, the police chased and caught hold Accused Nos. 2 to 5. Accused No.1 conveniently escaped from the arrest of police. On search of van, the police found 792 Kgs of Ganja in 37 bags.

Learned Counsel appearing on behalf of the petitioner submits that in the aforesaid crime, the petitioner was enlarged on bail on 24.11.2014. The trial in the said crime was in motion. Subsequently he was arrested and remanded to judicial custody in Crime No.20 of 2016. Thus he could not appear before the trial Court in connect with Crime No.98 of 2014. Consequently the said trial Court issued Non Bailable Warrant against the petitioner and taken him into custody on 01.09.2016 and since then, he is in jail.

Learned Counsel appearing on behalf of the petitioner submits that in Crime No.20 of 2016, the petitioner was already released on bail vide order dated 31.08.2016. He submits that non appearance of the petitioner before the trial Court was not deliberate and intentional, but due to his arrest in Crime No. 20 of 2016. Thus the petitioner is entitled to bail.

In the present case, there is a recovery of 792 Kgs of Ganja, which is a commercial quantity. Despite the same, the trial Court granted bail to the petitioner vide order dated 24.11.2014. In such a situation, Section 37 of the NDPS Act comes into play. While granting bail, the Court is of the opinion that the petitioner/accused would likely be acquitted and not commit similar offence while on bail. In the instant case, admittedly, the petitioner was released on bail in Crime No. 98 of 2014 and committed another similar offence vide Crime No.20 of 2016. Since the Ganja seized from the possession of the petitioner is commercial quantity, Section 37 of the NDPS Act comes into play. The petitioner is a habitual offender. Therefore, I am not inclined to allow the present Criminal Petition.

The Criminal Petition is accordingly dismissed. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE SURESH KUMAR KAIT

DATED 01st November, 2016.
Msnr_x

