

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3925 of 2017

ORDER:

In this petition filed under Sections 437 and 439 Cr.P.C., petitioners/A2 and A6 seek for regular bail in Cr.No.76/2016 of Chinturu PS, East Godavari District wherein the accused allegedly committed offence under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act, 1985.

2) Prosecution case is that on 19.11.2016 at about 9 AM., the Inspector of Police, Chinturu Circle received credible information about illegal transportation of ganja and he sent a requisition to his superior officers and obtained permission to conduct raid and then secured mediators and other police staff and at about 10 AM, they reached 'Y' junction and there found one lorry coming from Mothugudem and proceeding towards Chinturu, in which A1 to A6 were present. The police intercepted the lorry and on verification they found in the lorry 65 polythene bags containing 2,125.300 Kgs. of Marijuana (ganja). The police arrested them and registered the crime.

3) Bail is pleaded mainly on the submission that accused are innocent and a false case is foisted against them for stastical purpose. Additionally, it is pleaded that as per the mediators' report one Forest Range Officer who was the Gazetted Officer, followed the raid party to conduct raid and in whose presence the contraband was searched and seized. Learned counsel would plead, as per Section 50 of NDPS Act,

the raiding officer shall inform the accused his right to be searched in the presence of a Gazetted Officer or Magistrate and forthwith take him to Gazetted Officer or to the nearest Magistrate but contrary to it, the police have taken along with them a Gazetted Officer i.e. Forest Range Officer which is not contemplated under law. Therefore, the alleged search and seizure were vitiated. In this regard, he placed reliance on the decision of the Bombay High Court in *Dharmaveer Lekhram Sharma and another vs. The State of Maharashtra and others*¹. He further submitted accused have been in judicial custody since 19.11.2016. He thus prayed for bail.

4) Opposing the bail, learned Addl. Public Prosecutor would argue that it is true that Forest Range Officer who is a Gazetted Officer, followed the raid party. However, by that count alone it cannot be pleaded that there was violation of procedure contemplated under Section 50 of NDPS Act. He would argue that Section 50 of NDPS Act contemplates the raiding officer shall intimate to the accused of their right to be searched in the presence of a Gazetted Officer from a department mentioned in Section 42 of NDPS Act or before a Magistrate and as per their wish, he has to take them either before the Gazetted Officer or nearest Magistrate. To avoid delay and abscondance of the accused, if the raiding officer takes along with them an independent Gazetted Officer, that cannot be treated as violation of procedure. Learned Addl.P.P. would further argue that following of Section 50 of

¹ 2001 CrL.L.J. 4886

NDPS Act would come into play only when the person of an accused is searched, but the said provision has no application if other than the person of an accused i.e. the vehicle or the house or other place is searched. In the instant case, he would submit, no doubt, the person of the accused were searched in the presence of an independent Gazetted Officer but nothing was seized from their possession and it was only upon search of the lorry bearing No.AP 16 TX 6144, the raiding party found 2,125.300 kgs. of ganja and the same was seized. In essence, he would submit, the contraband was seized from the conveyance but not from the person of the accused, in which case the application of rigor of Section 50 of NDPS Act does not arise and hence there is no violation of said provision. He would submit that taking an independent Gazetted Officer along with raid party was upheld in a number of decisions. In this regard, he placed reliance on the judgment of the Apex Court in *State of Orissa vs. S.Mohanty and others*². He would submit that charge sheet was filed and case was numbered as S.C.No.91/2017 and pending on the file of I Additional Sessions Judge, Rajahmendravaram. He thus prayed to dismiss the application.

5a) Jurimetrics of CD file would show that police have seized contraband weighing 2,125.300 kgs. of ganja from the lorry bearing No.AP 16 TX 6144 and though the accused were checked in the presence of Gazetted Officer i.e. Forest Range Officer nothing was

² (2000) 2 SCC 170

seized from their person. Since the contraband was seized from the lorry and not from the person of accused, the rigor of Section 50 has no application vide judgment in *Povar Ganapathi @ Ganesh vs. State of A.P.*³. Hence, the contra argument cannot be accepted.

b) So far as other contention of the petitioners that taking the Gazetted Officer along with raiding party amounts to violation of Section 50 of NDPS Act is concerned, in *Dharmaveer Lekhram Sharma*'s case (1 supra) the Bombay High Court held that as per Section 50 of NDPS Act, if so required by the accused, he shall be taken to an independent and a responsible Gazetted officer or a Magistrate. Even if the raiding party could be accompanied by a Gazetted Officer, surely such a Gazetted Officer would not be an independent or responsible officer contemplated under Section 50 of NDPS Act and hence that procedure would amount to non-compliance of Section 50 of NDPS Act.

6) Be that it may, in *S.Mohanty*'s case (2 supra) cited by learned Addl.P.P., the facts were that along with raid party i.e. Deputy Superintendent of Excise and Sub-Inspector of Excise, an independent Gazetted Officer in the rank of Executive Magistrate (PW5 in that case) was taken, in whose presence the contraband 'charas' was seized in the house of the accused and the Honourable Apex Court approved the said seizure effected by the police. In that case, Section 50 of NDPS Act was held to be complied with.

³ CrI.P.Nos.14971 of 2016 and batch dated 27.10.2016

7) In that view of the matter, the argument raised by the learned counsel for petitioners cannot be accepted. As can be seen, commercial quantity of ganja was searched and seized in the instant case. As such, Section 37 of NDPS Act poses an interdict for considering the plea for bail. Since the charge sheet was already filed and case was registered, there can be no presumption that the accused have not committed offence for the purpose of considering their bail plea.

8) Having regard to these facts and circumstances, the bail petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 20.06.2017
Murthy

U. DURGA PRASAD RAO, J

