

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.7582 of 2017

ORDER:

This petition is filed, under Sections 437 and 439 Cr.P.C., by the petitioner/sole accused in Crime No.36 of 2017 on the file of the Station House Officer, Arakuvalley Police Station, Visakhapatnam District, registered for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The learned counsel for the petitioner submitted that the police implicated the petitioner for statistical purpose as per the oral instructions of their higher officials. He further submitted that the investigating agency has not complied Section 50 of the NDPS Act; therefore it is a fit case to grant bail to the petitioner.

3. *Per contra*, the learned Additional Public Prosecutor submitted that the investigation is in progress and the petitioner is not entitled for bail in view of Section 37 of the NDPS Act.

4. It is the case of the prosecution that on 10.04.2017 at 10:00 AM on receiving reliable information about the illegal transportation of ganja, the Sub-Inspector of Police, Arakuvalley, along with his staff and mediators, proceeded to Kothaballuguda bus stop in order to check the vehicles. In that process, the Sub-Inspector of Police found one person in possession of three gunny bags containing 52 kgs. of ganja. On interrogation, the said person revealed his name as Alpesh i.e., the petitioner herein. The Sub-Inspector of Police seized the said 3 gunny bags containing 52 kgs. of ganja from the possession of the petitioner. After following

the due procedure, the Sub-Inspector of Police registered the above case against the petitioner and produced him before the Judicial First Class Magistrate, Arakuvalley, for judicial custody.

5. The petitioner filed CrI.M.P.No.1741 of 2017 on the file of the Court of the Metropolitan Sessions Judge-cum-Special Judge for trial of offences under NDPS Act at Visakhapatnam and the same was dismissed on 13.07.2017 on the ground that the investigation is in progress.

6. The predominant contention of the learned counsel for the petitioner is that the Sub-Inspector of Police, Arakuvalley, has not strictly adhered to the procedure as contemplated under Section 50 of the NDPS Act; therefore, remanding the petitioner to judicial custody is *void ab initio*. Hence, it is a fit case to grant bail to the petitioner.

7. As per the principle enunciated by the Hon'ble apex Court in **State of H.P. v. Pawan Kumar¹, Ajmer Singh v. State of Haryana², Jarnail Singh v. State of Punjab³ and State of Rajasthan v. Tara Singh⁴**, Section 50 of the NDPS Act can be pressed into service if contraband is recovered in consequence of body search of the suspect or the accused. If the contraband is seized from a gunny bag, brief case or container, Section 50 of the NDPS Act has no application.

8. Let me consider the facts of the case on hand in the light of the above legal principles.

¹ (2005) 4 SCC 350

² (2010) 3 SCC 746

³ (2011) 3 SCC 521

⁴ (2011) 11 SCC 559

9. A perusal of the record reveals that the Sub-Inspector of Police, Arakuvalley, seized 3 gunny bags weighing 52 kgs. of ganja from the possession of the petitioner, which is a commercial quantity. The record further reveals that the contraband was not seized in pursuance of the personal search of the petitioner; therefore, Section 50 of the NDPS Act is not applicable to the facts of the case on hand. A perusal of the record *prima facie* reveals the role played by the petitioner in the commission of the offence. The petitioner belongs to the State of Karnataka and the investigation is in progress.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the considered view that it is not a fit case to grant bail to the petitioner.

11. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

Date: 29.08.2017
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