

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION NO. 3812 OF 2017

DATE: 13.06.2017

Between:

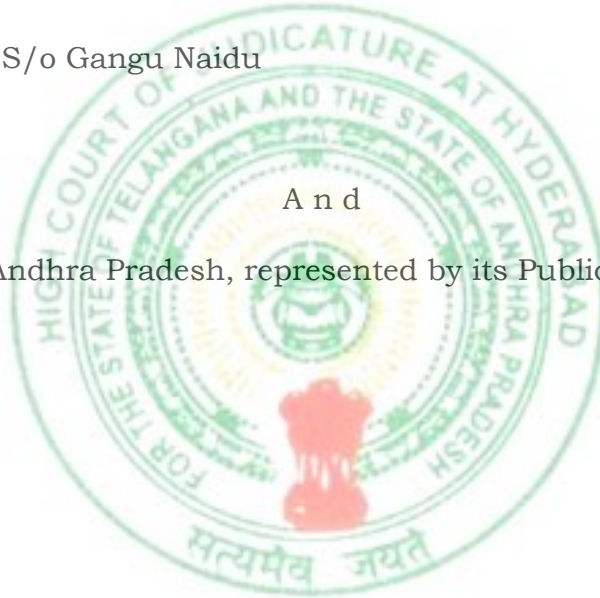
Ruthala Ravi S/o Gangu Naidu

....Petitioner

A n d

The State of Andhra Pradesh, represented by its Public Prosecutor

....Respondent



THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**CRIMINAL PETITION No. 3812 of 2017****ORDER:**

This Criminal Petition is filed by petitioner/A4 under Sections 437 and 439 Cr.P.C., seeking regular bail in Crime No. 201 of 2016 of Tuni Rural Police Station, East Godavari District, wherein the offence allegedly committed by the petitioner/A4 is under Section 8 (c) read with 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. The prosecution case is that on 31.10.2016, on receipt of reliable information about illegal transportation of ganja, the Inspector of Police after obtaining orders from Sub-Divisional Police Officer, (SDPO), Peddapuram while conducting vehicle check, he intercepted a maruthi EECO AP 31 DE 5803, wherein he found the accused 1, 2 & 4 transporting 40 kgs of ganja, which is a commercial quantity. The accused were arrested and hence the case in Crime No. 201 of 2016.

3. Learned counsel for petitioner while seeking bail would argue that there is a gross infraction of Section 50 of NDPS Act, inasmuch as the police have not taken an independent mediator for affecting the search of petitioner/A4 and the petitioner/A4 has been in custody since 31.10.2016

and also for the fact that the charge sheet has already been filed, petition may be allowed and bail may be granted to petitioner/A4.

4. Opposing the bail application, learned Additional Public Prosecutor would argue that the question of violation of Section 50 of the Act does arise in the matter, as the contraband was not seized from the person of the accused, but it was found in the vehicle i.e., in a car in which the contraband was being illegally transported. In Common Order dated 27.10.2017 passed in Criminal Petition No. 14971 of 2016 and batch, this Court considering the various citations has held *that if any recovery is effected from the person by violating the scheme of Section 50 of the Act that recovery would be illegal and based upon that the accused cannot be convicted. But if recovery is otherwise and not from the person the accused cannot take benefit of Section 50 of the Act, if violated. In none of the cases on hand, recovery of the contraband was effected from any of the persons, but was effected from the vehicles during the course of transportation of ganja from one place to another.* Learned Additional Public Prosecutor admitted that charge sheet was filed on 20.11.2016, but opposed the petition stating that in view of the gravity of the charge and commercial quantity of the ganja was seized, bail may not be granted.

5. This Court finds force in the submission of learned Additional Public Prosecutor. 40 Kgs of ganja was seized from the car in which A1

to A4 are transporting said ganja. It is a commercial quantity. In the confessional statements of petitioner/A4 and others it was stated that they were transporting it. Of course, A3 was car driver and A4 was accompanying with him. However, A1 and A2 promised to pay amount to them if they cooperate for illegal transportation of ganja and they readily agreed. In that view of the matter, there is a prima facie material against all the accused for the offence alleged. Hence, Section 37 comes into play. So far as the argument of learned counsel that Section 50 has not violated, in the cited decision, it was clearly held that if the recovery was not from the person, Section 50 of the Act has no application. Admittedly, in the case, the contraband was seized from the vehicle and not from the person of the accused. As such that argument is of no avail to the petitioner/A4.

6. Considering the totality of facts and circumstances, this bail application is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in this petition shall stand closed.

U.DURGA PRASAD RAO, J

Date: 13.06.2017
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