

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.4719 of 2017

ORDER:

In this petition filed under Sections 438 Cr.P.C, petitioners/A1 to A3 seek pre-arrest bail in Cr.No.27 of Dumbriguda PS, Visakhapatnam District registered for the offence under Section 20(B) of NDPS Act.

2) The prosecution case is that on 30.03.2017 on credible information that Ganja was being illicitly transported, the SI of police, Dumbriguda PS along with staff and mediators and Gazetted Officer i.e. Tahsildar of Dumbriguda, proceeded to Killoguda junction for checking the vehicles. At about 2.00 PM, they found a white Mahindra Car XUV 500 model bearing No.CG 08 Z 6138 proceeding from Chatuva to Aruku. When the SI of police tried to stop the vehicle, the driver without stopping the vehicle drove the car at high speed thereby, it went to some distance and turned turtle. Three persons in the said vehicle i.e. A1 to A3 fled away. The police chased them but could not catch them. On checking the vehicle they found 55 Kgs. of Ganja kept in packets. On the instructions of SI, the Tahsildar of Dumbriguda, who is the Gazetted Officer, seized the contraband and the vehicle under due process. During the course of investigation they came to know about the particulars of the accused. A1 is none other than the husband of Chairman of Mandal Praja Parishad, Dumbriguda Mandal, A2 is his son-in-law and A3 is the Personal Assistant of A1. Investigation is reported to be pending.

3) Staunchly opposing the allegations, learned counsel for petitioners Sri K.Sai Rama Murthy, argued that the car in question met with accident on 19.03.2017 itself and it was not in a mobile condition and the factum of accident was reported in local newspapers on 21.03.2017 and therefore, the question of accused using the said car in committing the offence is highly improbable and unrealistic. The police somehow managed the said car to implicate the accused in the offence. He thus prayed for bail.

4) Opposing the bail, learned Addl.P.P. vehemently argued that the factum of alleged accident was not reported in any police station and therefore, the same cannot be believed. Even assuming the said car was involved in the accident, the newspaper clipping and the photo of the car produced by the petitioners in the material papers would show that the car was only tilted side way and apparently no big damage was caused to the said vehicle and therefore, within the span of 10 days vehicle could be repaired and used for committing the offence on 30.03.2017 and hence the said possibility cannot be ruled out. On this submission and investigation is in the midway, he prayed to dismiss the bail application.

5) With regard to the offence occurred on 30.03.2017, we have the statement of Tahsildar of Dumbriguda who stated about his following along with SI of Police, Dumbriguda PS and police trying to stop the vehicle Mahindra white car bearing No.CG 08 Z 6138 and the driver speeding away without stopping the car and its turning turtle and the three persons in the vehicle skulking away. He clearly stated the car is of XUV 500 model bearing No.CG 08 Z 6138. He further stated on the request of

SI of Police he seized the contraband from the car. The statement of another witness Setti Naidu Babu would show while he was passing on the way at the time of accident, he saw three persons running away and he identified the accused and informed to the police during enquiry. Therefore, the statement of Gazetted Officer and independent witness would *prima facie* show that the vehicle bearing No.CG 08 Z 6138 was indeed, involved in the crime and A1 to A3 participated in the crime. Ofcourse, whether the car was involved in the accident 10 days prior to the offence and was in an immobile condition or not are the facts which have to be considered during the trial. Admittedly, no police report was given about the alleged accident.

6) Thus, having regard to strong *prima facie* case against the accused and commercial quantity of Ganja being seized and as Section 37 of NDPS Act poses an interdict for considering the request of the petitioners to grant bail, this petition is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 27.07.2017

Murthy