

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9496 of 2017

ORDER:

This petition is filed, by the petitioner-accused No.4, under Sections 437 and 439 Cr.P.C., seeking bail in Crime No.05 of 2017 on the file of the Station House Officer, Donkarai Police Station, East Godavari District, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The learned counsel for the petitioner submitted that the petitioner is a lorry driver, who has nothing to do with the alleged transportation of ganja. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioner.

3. The learned Additional Public Prosecutor submitted that the ganja seized from the possession of the accused is a commercial quantity; therefore it is not a fit case to grant bail to the petitioner in view of Section 37 of the NDPS Act. He further submitted that the petitioner belongs to the State of Maharashtra.

4. The case of the prosecution is that on 27.07.2017 on receiving reliable information about the illegal transportation of ganja, the Inspector of Police, Chinturu Circle, proceeded to Seeleru-Donkarai road within the limits Donkarai Police Station in order to check the vehicles. On the same day the Inspector of Police intercepted the lorry bearing No.AP-01-W-7252, which came from Seeleru side. On seeing the police, the petitioner and other persons tried to escape. The police apprehended the petitioner and

another and seized 2,400 kgs. of ganja from the lorry. The Inspector of Police drew the samples and prepared mediatorsnama. After completion of the necessary formalities, the Sub-Inspector of Police, Donkarai Police Station, registered the above case and produced the petitioner before the concerned Court for judicial custody.

5. The petitioner filed CrI.M.P.No.1441 of 2017 on the file of the Court of the I Additional District and Sessions Judge, East Godavari at Rajamahendravaram and the same was dismissed on 15.09.2017.

6. A perusal of the record reveals that accused Nos.1 and 2 engaged accused Nos.3 and 4 for transportation of ganja from East Godavari District. The record further reveals that the Inspector of Police seized the ganja weighing 2,400 kgs. from the lorry bearing No.AP-01-W-7252.

7. As per the principle enunciated by the Hon'ble apex Court in **State of M.P. v. Kajad¹, Collector of Customs v. Ahmadalieva Nodira²** and **Union of India v Sanjeev V. Deshpande³**, the court can grant bail to the persons involved in the cases under the NDPS Act, though the contraband seized is a commercial quantity, if the court satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if he is released on bail, he will not involve in similar type of offences.

¹ (2001) 7 SCC 673

² (2004) 3 SCC 549

³ (2014) 13 SCC 1

8. In the instant case, the ganja seized is 2,400 Kgs., which is a commercial quantity. A perusal of the record *prima facie* reveals the role played by the petitioner in the commission of the offence.

9. Taking into consideration 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.

10. Accordingly, the Criminal Petition is dismissed.

Date: 13.10.2017
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T.SUNIL CHOWDARY, J

