

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5893 of 2017

ORDER:

In this petition filed under Sections 437 and 439 Cr.P.C, the petitioner/A.5 seeks regular bail in Crime No.262 of 2016-17 of Prohibition and Excise, Prathipadu Police Station, East Godavari District which was registered against the petitioner and other accused for the offences under Sec.8(c) r/w 20(b)(ii)(c) of NDPS Act.

2) The prosecution case is that on 14.09.2016, the Inspector of Prohibition and Excise, Enforcement Wing, along with mediators detected a case of illegal transportation of dry Ganja near Krishnavaram Toll Plaza of Kiralampudi Mandal, East Godavari District. When A.1 and A.2 were transporting Ganja in Volkswagen Vento TD car bearing No.AP 16 CL 4849, the police intercepted them and found them transporting 174 kgs of Ganja. They arrested A.1 and A.2 and seized the contraband. On questioning, A.1 and A.2 confessed that Ganja was brought from unknown person at Chinthapalli agency area of Visakhapatnam. Whiles, while getting the accused to the Prohibition and Excise Station, Prathipadu the seized car met with an accident and one of the accused i.e, A.2, one Sub-Inspector and two Constables of Prohibition and Excise of Enforcement Wing, sustained severe multiple injuries and one constable died on the spot and 2nd injured constable also died on the next day at Government General Hospital (GGH), Kakinada, while undergoing treatment. The injured were initially shifted to Community Health Center (CHC), Prathipadu and after first-aid they were referred to GGH,

Kakinada for treatment. A.2 was admitted as inpatient in the said hospital. On 15.09.2016, the Inspector recorded the confessional statement of A.2 wherein the role of A.3 to A.6 was revealed. The petitioner/A.5 is concerned, he played a key role and he was actively engaged in Ganja business by staying at Visakhapatnam. The petitioner in fact drove the vehicle bearing No.AP 16 CL 4849 upto a certain point and he got down from the vehicle at Narsipatnam cross roads and from there A.1 drove the car. The prosecution case was that the petitioner/A.5 forgot his mobile phone in the vehicle and it was seized by the police and said mobile phone contains two SIM cards i.e, 8695264616 and 9487948858. Thus the police claim that the petitioner's role was established not only by virtue of the confession of A.2 but also due to the said cell phone. After investigation, the police laid charge sheet against all the accused.

3) Denying the charges, learned counsel for petitioner/A.5 sought for bail on the main plank of argument that in the alleged initial confessional statements of A.1 and A.2, they did not reveal anything about the petitioner/A.5 and it was only during the second confessional statement of A.2 in the hospital, he allegedly made some revelation against petitioner/A.5 which is quite unbelievable. Learned counsel vehemently argued that though the prosecution allegedly arrested A.2 on 14.09.2016 but produced him for remand only on 13.10.2016 without authorisation which is against law. He relied upon the decision reported in ***Matang Singh vs. Central Bureau of Investigation***¹ to show that detention of the police without authorisation by the Magistrate under Sec.167 Cr.P.C is illegal.

¹ 2015 SCC Online Cal 845 = (2016) 1 Cal LJ 366

He argued, it would show that his alleged arrest on 14.09.2016 was a myth and concoction. Consequently, the alleged confession of A.2 and his revealing the names of other accused is also unbelievable. He thus prayed for bail. He further submitted that A.3 and A.4 were granted statutory bail by the trial Court.

4) Opposing the bail, learned Additional Public Prosecutor argued that but for the accident, A.2 would have been produced for remand to the judicial custody along with A.1. He submitted, A.2 was discharged from the Government General Hospital, Kakinada only on 13.10.2016 and he was produced before the Court on the said day and therefore, the delay in his production cannot be suspected. Learned Public Prosecutor further argued that the case against petitioner/A.5 was based not only on the confession of A.2 but also on the cell phone and call data particulars. He submitted that the commercial quantity of Ganja was seized from the possession of A.1 and A.2 and in view of the gravity of the offence, bail may be refused.

5) As can be seen from the CD file and charge sheet, A.1 and A.2 were arrested on 14.09.2016 itself. However while bringing them to the Prohibition and Excise Station, Prathipadu, the seized car met with an accident, due to which A.2, one Sub-inspector and two constables of Prohibition and Excise Department sustained severe injuries out of which one constable died on the spot and another constable died on the next day in GGH, Kakinada while undergoing treatment. Therefore, it was not possible for the I.O to physically produce A.2 in the Court. In the remand

report of A.1, while producing him before the Judicial First Class Magistrate, Prathipadu on 15.09.2016, the Prohibition and Excise Inspector clearly mentioned that while transporting the seized property and the accused to the police station, the car met with an accident and one of the accused and S.I of Police and one constable sustained severe injuries and another constable who suffered severe injuries had expired. He also mentioned that one of the accused (A.2), who was injured, was initially given first-aid treatment in CHC and was later transferred and admitted in GGH, Kakinada wherein he was undergoing inpatient treatment and the said accused would be handed over consequent to his discharge from the hospital. It is to be further noted that in the remand report dated 13.10.2016 relating to A.2, the Inspector clearly mentioned that A.2 was under treatment in Government General Hospital, Kakinada from 14.09.2016 to 13.10.2016 and he was discharged on 13.10.2016 and hence he was producing him before the Court with the medical certificate. In view of the above record, it is preposterous for the petitioner/A.5 to contend that though A.2 was arrested on 14.09.2016, he was belatedly produced for remand on 13.10.2016 without any plausible cause and therefore his alleged arrest and his confessional statement are all myth. Consequently the decision cited by the petitioner in *Matang Sinh*'s case (1 supra) has no application to the facts of the present case. The prosecution relies upon not only on the confessional statement of A.2 but also on the cell phone of petitioner/A.5 to connect him to the case. There is a strong *prima facie* case against the petitioner/A.5 and commercial

quantity of Ganja was seized in this case. Therefore, Section 37 of NDPS Act is an interdict for granting bail.

6) Accordingly, the bail application is dismissed.

U.DURGA PRASAD RAO, J

Date: 27.07.2017

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