

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2691 of 2017

ORDER.

This is the successive bail application filed on behalf of petitioners/A1 and A2 seeking regular bail in Cr.No.123 of 2016/2017 of Prohibition and Excise Station, Rampachodavaram, East Godavari District, wherein the petitioners allegedly committed offence under Section 8 (c) read with Section 20 (b) (ii) (c) of NDPS Act, 1985.

It is suffice to say that earlier bail application in CrI.P.No.208 of 2017 was dismissed for the reasons that the quantity seized from the possession of the accused's residence was a commercial quantity and the violation of Section 50 of the NDPS Act, as alleged, was not prima facie established.

Seeking bail, learned counsel for the petitioners would mainly shore up on filing of charge sheet and registration of case as S.C.No.92 of 2017 on the file of I Additional District and Sessions Judge, Rajahmundry as change in circumstances. Added to it, learned counsel would try to expose procedural violation under Section 42 of the NDPS Act. He would submit that in mediators' report, the net weight of ganja after deducting 113.5 grams for the purpose of chemical analysis, was not specifically mentioned and in that regard, the court cannot draw any interference about the net weight.

Nextly, the Police Officer who participated in the raid cannot be regarded as independent Gazetted Officer and due to these

procedural violation also, he would argue, the petitioners deserve bail.

Learned Additional Public Prosecutor would submit that charge sheet was filed and case was registered as S.C.No.92 of 2017 on the file of I Additional District and Sessions Judge, Rajahmundry. He would further submit that the gross weight of the contra band seized was 554.4 kgs. which was clearly mentioned in the mediators' report and there was also a clear mention in the mediators' report about the procedure in which the samples of 113.5 of ganja was seized and in that background, he would argue, non-specific mention of the net weight of the contraband after deducting the sample weight, cannot be treated as violation in terms of Section 42 of the NDPS Act and petitioners cannot seek for bail as they could not show any prejudice caused to them.

Nextly, he would submit that the Excise Inspector was notified as Gazetted Officer in terms of Section 42 of the NDPS Act, and therefore, his participation in the raid cannot be treated as violation of Section 42 of the NDPS Act and thus, he prayed to dismiss the bail application.

Heard.

As can be seen from the order in CrI.P.No.208 of 2017, this court, after considering the points of arguments raised by the petitioners, has dismissed the bail application by an elaborate order. Subsequently, of course, charge sheet was filed and case was registered as S.C.No.92 of 2017 pending on the file of I Additional District and Sessions Judge, Rajahmundry, East Godavari District. In

view of the fact that commercial quantity of Ganja was allegedly seized from the possession of petitioners/A1 and A2, Section 37 of the NDPS Act would pose an interdict for grant of bail, in spite of charge sheet was filed, unless the court comes to a prima facie conclusion that the accused have not committed the offences or that they will not commit any offence in terms of Section 37 (2) of NDPS Act. That presumption cannot be made because, charge sheet is filed in this case which prima facie shows the involvement of the accused.

Coming to the argument of the learned counsel for the petitioners, that the net weight of the contraband after deducting the sample weight was not clearly and specifically mentioned in the mediators' report, I am afraid, that cannot be a ground to consider the bail application. It is true that in the mediators' report, it was not specifically mentioned about the left over net weight. However, in the mediators' report, it is clearly mentioned that 554.4 kgs of ganja was found and seized out of which, 113.5 grams of ganja was taken up for chemical analysis. Thus, logically speaking, the left over weight is more than a commercial quantity and non-mentioning of that fact in specific terms can not be regarded as causing prejudice to the petitioners, to consider their plea for bail.

The next argument is about the violation of Section 42 of the NDPS Act as if the participation of the Excise Inspector in the raid is a violation by itself.

The decision reported in *STATE OF RAJASTHAN v. PARMANAND*⁽¹⁾ is relied upon by the petitioners.

¹ AIR 2014 1384

The submission of the learned Additional Public Prosecutor would be that Excise Inspector being a notified Gazetted Officer can participate in the raid and that cannot be considered as a violation of Section 42 of NDPS Act. Apart from that, mediators' report would show that the Excise Inspector and Mediators have specifically asked the accused as to whether they wish to be searched by an independent Gazetted Officer, upon which, they stated that they can be searched by the Excise Inspector and Mediators and thereupon, a personal search was conducted and nothing was found with them and thereupon, the house search was conducted. So, in the entire exercise, nothing was found on the person of the accused and it was only during the course of house search, the contraband was found. Hence, violation of Section 42 or for that matter Section 50 cannot be pleaded. Consequently, cited decision has no application.

There are no merits in the bail application and accordingly, the same is dismissed.

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

U.DURGA PRASAD RAO,J

Dt: 20-6-2017.

Dvs

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Dated 20-6-2017