

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.4751 OF 2017

ORDER:

A request is made to grant regular bail under Sections 437 and 439 of the Code of Criminal Procedure, 1973.

2. The petitioner is arraigned as accused No.2 in S.C. No.98 of 2017, on the file of the I Additional Sessions Judge, Rajahmundry and alleged to have committed 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 Act 1985').

3. Heard Ms. Madhavi Priya Mantena, learned counsel for the petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel's main submissions have been that the quantity seized, even assuming without admitting, from the petitioner was very minimal and slightly above the commercial quantity. It is also according to her that there is violation of provisions of Section 50 (3) of the Act, 1985 and, therefore, sought to grant bail.

5. The learned Assistant Public Prosecutor resists the request on the main ground that the quantity seized from the petitioner is commercial quantity as 24 kgs. of *ganja* was seized from the possession of petitioner and accused No.1 and though, each of them

owned and possessed six pockets containing 2 kgs. each, but in view of the decision of a learned Single Judge of this Court in Crl.P.No.3744 of 2017, collective possession is to be considered but not apportionment basing on the number of accused and the quantity of *ganja* seized and he has also placed a copy of said judgment for perusal.

6. So far as compliance of mandatory requirement of Section 50 (3) of the Act, 1985 is concerned, the *panchanama* is very clear showing that an option was given to the petitioner and other accused and they consented LW.7 for checking the persons and also gave their willingness in writing to say truth and to that effect, LW.7 served notices on the petitioner and other accused and obtained written consent. In the presence of such an averment, certainly, it is to be said that there is no merit in the submission made by the learned counsel for the petitioner.

7. Now, turning to the apportionment, certainly, apportionment is not recognized or provided by any provisions of the Act, 1985. In fact, what is not provided if it is done would amount to illegal exercise of power forbidden by law. The observations of the learned Single Judge of this Court in Crl.P. No.3744, 2017, dated 12.06.2017, since apt, extracted the same thus:

“The argument is though mathematically correct, logically and legally not. When an offence of this nature is collectively committed by a number of accused and they

were intercepted and caught at a time and at one place by the police, the apportionment of the contraband seized among accused is impermissible. It should be noted that NDPS Act does not contain any express provision permitting such apportionment. Therefore, there is no legal sanction behind it. While committing the offence collectively, the accused may, for convenience sake, carry the contraband individually. In such circumstances, the offence has to be viewed as a single offence but not as different offences. In Crl.M.P. No.12358 of 2016 a learned Single Judge of this Court, no doubt, applied the concept of apportionment. However, in another case, in common order in Crl.M.P. Nos.2052 and 2056 of 2017 dated 15.03.2017 the said concept was not followed by another learned single Judge. As stated, since there is no statutory sanction, such an apportionment is impermissible, in my considered view.”

8. In view of what has been observed by the learned Single Judge of this Court in the aforesaid case, the apportionment cannot be resorted to dividing the quantity though, 12 kgs. were found in possession of each of the accused, but they were traveling together. The learned counsel has also placed reliance on a decision of Single Judge of Karnataka High Court in **Shankar Krishnasa Habib and another v. State of Karnataka**¹ and also placed a decision of Delhi High Court rendered by Division Bench in **Jyotin Vyas v. Union of India and others**². It is no doubt true, the quantity in **Shankar Krishnasa Habib**’s case is 50 kgs. and in **Jyotin Vyas**’s case, the

¹. 1992 CrL.L.J. 205

². 1989 CrL.L.J. 2235

quantity is 25 kgs. But, each case is to be judged on its own merits.

Therefore, it is not a fit case where regular bail can be granted.

The present Criminal Petition is, accordingly, dismissed.

A. SHANKAR NARAYANA, J

July 10, 2017.

Mgr

