

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION Nos.3779, 3907 and 4017 of 2017

COMMON ORDER:

Crl.P.No.3779 of 2017 was filed by A.2, Crl.P.No.4017 of 2017 was filed by A.3 and Crl.P.No.3907 of 2017 was filed by A.4 seeking regular bail in Crime No.14 of 2017 of Mothugudem Police Station, East Godavari District, wherein it is alleged that the petitioners and other accused committed 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 prosecution case is that on 14.04.2017 at about 3:00PM when the accused were transporting 60 Kgs., of Ganja in three gunny bags in Car bearing No.TS-04-EJ-8286, the Inspector of Police, Chinturu Circle along with staff and the Gazetted Officer intercepted the vehicle and on checking the vehicle, found contraband and seized the same and arrested the accused. Hence, the Crime.

3) The confessional statements of accused would reveal that A.1 got acquaintance with A.3 and A.4. A.1 informed them that he knows some drug peddlers and he induced A.3 to A.4 to invest money for purchasing Ganja. A.1 also contacted A.2, who is a transporter of Ganja and he arranged a car. On the previous day of their arrest, all of them left Kothagudem Village and came to Lakkavaram Junction of Mothugudem and after loading Ganja bags in forest, while they were

returning to Lakkavaram Junction, they were intercepted by police and arrested.

4a) Denying the allegations, it is argued on behalf of the petitioners that they are innocent of the offence and in this case there was a gross violation of procedure contemplated under Section 50 of the NDPS Act, inasmuch as, the personal search was not conducted in accordance with Section 50 of the NDPS Act. It is further argued that in the mediator's report, it is not specifically mentioned that the C.I of Police, Chinturu received credible information about illegal transportation of Ganja personally recorded the same in a register and then he informed the said fact to higher authorities and obtained permission. Learned counsel would submit that due to the above crucial procedural violation, the entire search and seizure were vitiated. Thus, prayed for bail.

b) Additionally, on behalf of A.4, it is stated that he is innocent and has nothing to do with the offence.

5a) Opposing the bail, learned Addl.P.P. argued that all the accused were guilty of illegally transporting 60 kgs. of ganja and there was no violation of Section 50 of NDPS Act. The ganja was searched and seized in the presence of Veterinary doctor who was a Gazetted Officer, and added to it, there was no personal check of the accused and the contraband was not found on their person but it was found in the car dickey and therefore, the rigor of Section 50 of NDPS Act will

have no application. On this proposition, he relied upon the judgment of this Court in Crl.P.Nos.14971 of 2016 and batch dated 27.10.2016.

b) Nextly, refuting the allegation that there was no mentioning in the mediators' report to the effect that on receipt of prior information about the illegal transportation of ganja the CI personally recorded the information in a register, learned Addl.P.P. would argue that personal recording of information by the receiving officer is not a pre-requisite under Section 42 of NDPS Act. In this case, CI of Police who himself is a Gazetted Officer, on receiving the information got it mentioned in the General Diary through the SHO, Mothugudem PS. Thereafter, he proceeded for inspection of vehicles at Lakkavaram Junction along with staff and independent Gazetted Officer. Hence, there was no violation of Section 42 of NDPS Act. Learned Addl.P.P. produced a copy of GD dated 14.04.2017. He thus prayed to dismiss the petitions.

6) Jurimetrics of CD file which contains the confessional statement of accused would show commercial quantity of contraband ganja i.e. 60 kgs was recovered from accused and seized. As such, Section 37 of NDPS Act would pose an interdict to consider the bail application of the accused unless of course, the Court is *prima facie* satisfied that there was reasonable ground to believe that accused were not guilty of such offence and that they are not likely to commit any offence while on bail. As already stated, the record shuts a strong *prima facie* case against all the accused and all them were caught red-

handed while illegally transporting ganja. Hence, there is no scope for assuming that they have not committed any offence at this stage.

7) Coming to the first argument that Section 50 of NDPS Act was not followed, in this case, as rightly submitted by the Addl.P.P., the record shows that contraband was found not on the person of the accused but it was found and seized from the dickey of the car. In the cited decision, a learned Judge of this Court while referring several judgments of the Apex Court, has observed that if any recovery was effected from the person by violating the scheme of Section 50 of the Act, the recovery would be illegal but if recovery was otherwise and not from the person, the accused cannot take benefit of Section 50 of the Act. The said judgment applies in the instant case with all the force. Moreover, record shows the search was conducted in the presence of independent Gazetted Officer i.e. Veterinary Doctor. Hence, petitioners cannot clamor violation of Section 50 of NDPS Act.

8) The next argument of the petitioners is concerned, in the mediators' report it was noted by the mediators, the CI of Police on receiving prior information about the illegal transportation of ganja, summoned the mediators and the Gazetted Officer i.e. Veterinary Doctor and proceeded along with them. No doubt, there is no specific mention in the mediators' report that CI of Police personally recorded prior intimation in any particular register. However, a perusal of the copy of GD file shows that there was an entry made in it about the CI

proceeding to the PS and informing about the information and getting mentioned in the GD. Therefore, merely because that fact was not mentioned in the mediators' report, the search and seizure cannot be considered as vitiated.

9) In the result, bail applications are dismissed.

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

U. DURGA PRASAD RAO, J

Date:19.06.2017

Scs/Murthy

