

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5678 of 2017

ORDER:

In this petition filed under Sections 437 and 439 Cr.P.C, the petitioners/A1 and A.2 seek regular bail in Crime No.54/2017 of Narsipatnam Town PS registered for the offences under Sec.20(b)(ii)(c), 25 r/w 8(c) of NDPS Act.

2) The prosecution case is that on 13.03.2017 in the morning hours, on information given by the Assistant Superintendent of Police, Narsipatnam, about illegal transportation of Ganja, the Sub-Inspector of Police, Narsipatnam, organised a team and started conducting vehicle checking on the B.T road situated opposite to Government Degree College, Narsipatnam. They found car bearing No.AP 31 BH 8889 coming from Chinthapalli side and the police party intercepted the said car and found therein the petitioners/A.1 and A.2. The S.I of Police by following procedure contemplated under Sec.50 of NDPS Act, checked the car and seized 70 kgs of Ganja. The car owner Ravi Kumar escaped from the spot.

3) Denying the allegations, learned counsel for petitioners pleaded for bail on the main plank of argument that admittedly the Sub-Inspector of Police acted upon the instructions of his Superior Officer i.e, Assistant Superintendent of Police, Narsipatnam and not on any other information. He did not secure any warrant from the empowered officer and therefore,

the entire search and seizure are vitiated for not following the provisions of Sec.41 and 42 of NDPS Act.

4) Learned Additional Public Prosecutor opposed the bail and argued that the S.I of Police is a Gazetted Officer and therefore upon the information from any quarter about the illegal transportation of Narcotic Drugs and Psychotropic Substances, he can act upon and conduct search and seizure without the necessity of securing warrant and therefore, the action of the S.I of Police cannot be said to be devoid of law. He would further submit that the investigation is still pending and other accused is at large and he thus prayed to dismiss the bail application.

5) The G.O.Ms.No.184, Revenue (E) dated 14th February, 1986 reads thus:

“In exercise of the powers conferred by sub-section(1) of Section 42 of The Narcotic Drugs and Psychotropic Substances Act, 1985, (Central Act 61 of 1985), the Governor of Andhra Pradesh hereby empowers the officers of the State Excise Department, including Enforcement Wing, not below the rank of Sub Inspectors and all the officers of Police Department not below the rank of Sub Inspector to exercise the powers under the said sub section.”

Hence, it is clear that all the officers of Police Department not below the rank of Sub Inspector are empowered to exercise the powers under Section 42(1) of NDPS Act. In view of the said legal position, the argument of learned counsel for petitioners is bereft of merits. The commercial quantity of the contraband was seized from the possession of

the accused and in view of the interdict under Section 37 of the NDPS Act and as the investigation is pending, it is not a fit case to grant bail.

6) Accordingly, this bail application is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 25.07.2017

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