

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5975 of 2017

ORDER:

This is the renewed bail application of petitioners/A1 and A2. Their earlier bail application in Criminal Petition No.4474 of 2017 was dismissed by this Court on 29.06.2017 in view of the strong *prima facie* case and also more than commercial quantity of Ganja i.e, 370 kgs was seized from the possession of accused.

2) Denying the prosecution case, learned counsel for petitioners would seek bail on the submission that in this case the police officer has grossly violated the procedure contemplated under Sec.52-A of NDPS Act on the aspect of taking the samples in the presence of Magistrate and therefore, the entire prosecution case is vitiated. On this ground, he sought for bail.

3) Opposing the bail, learned Additional Public Prosecutor would argue that even assuming that there was a violation of Sec.52-A of NDPS Act, still the case of the prosecution cannot be thrown away because the violation of Sec.52-A of NDPS Act would result that the sample and other material cannot be treated as a primary evidence and even then the prosecution can prove its case by other means and therefore, on that ground the petitioners cannot seek for bail.

4) There is reasonability in the submission of learned Additional Public Prosecutor. Whether there is a violation of Sec.52-A of NDPS

Act and what is its impact are the aspects to be decided only during the trial and not while considering the bail application. Hence, the petitioners cannot seek for bail on the alleged violation of Sec.52-A of NDPS Act. There are no changed circumstances to warrant bail.

5) Accordingly, the petition is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 31.07.2017
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