

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3435 of 2017

ORDER:

This petition is filed by the Petitioner/A.4 under Sections 437 and 439 of Cr.P.C. seeking to grant bail in Cr.No.31 of 2017 of Rajanagaram Police Station, East Godavari District wherein the petitioner/A.4 and other accused allegedly committed the offences punishable under Sections 8 (c) read with 20 (b) (ii) (c) of N.D.P.S.Act.

The brief facts of the prosecution case are that on 16-2-2017, following information regarding illegal transportation of ganja in a Leyland van bearing No.AP 05-TD 5997 from Balimela to Rajahmundry, police during vehicle check, seized the contraband and remanded the petitioner and other accused to police custody. So far as A.5 is concerned, specific accusation was made against him basing on confessional statement of A.4. The confessional statement of A.4 is that A.4 was engaged in purchase and transport of ganja and on 15-2-2017, he received the intimation about the availability of ganja and if he comes to Rajahmundry, he would get the ganja and on receiving such information, A.4 informed his friend one Ibrahim i.e., petitioner/ A.5, and A.6 that if they accompany him to bring ganja from Rajahmundry to Hyderabad, he would pay Rs.10,000/- to the petitioner/A.5 and A.6 and they agreed. Thereafter, petitioner/A.5 and A.6 started at Hyderabad in a Maruthi Shift Car bearing No.TS 09-EL 4850 and reached Rajahmundry in the early morning on 16-2-2017, from there, they went to Malkangiri in Orissa State and met the other accused and loaded ganja in a van and reached near Rajanagaram Mandal and there, the police intercepted them and arrested them.

Heard the learned counsel for the petitioner and learned Additional Public Prosecutor.

Denying the allegations, learned counsel for the petitioner would submit that but for the alleged confessional statement of A.4 and also that of petitioner A.5, there is absolutely no tangible material

to hold that the petitioner was in any way concerned with the offences. Learned counsel further submitted that even assuming that the confessional statement of A.4 were to be true, as per the said statement, the petitioner-A.5 only followed A.4 and A.6 in the car and he was not found along with the ganja in the lorry nor did the police seize the contraband from out of his possession and as such, there is absolutely no material, much less, prima facie material to connect the petitioner/A.5 to the offences. The petitioner/A.5 has been in custody since 16-2-2017 and prime part of investigation is already completed and thus, sought for grant of bail.

Learned Additional Public Prosecutor would submit that confessional statement of A.4 and A.5 are in clear terms about the involvement of petitioner/A.5 in the offence inasmuch as A.4 in his confessional statement clearly stated that he was going to purchase the ganja from other accused and sought for assistance of A.4 and A.5 to transport ganja from Rajahmundry to Hyderabad and knowing the same, petitioner/A.5 and A.6 agreed to accompany him to Rajanagaram.

Learned Additional Public Prosecutor further submitted that though contraband was not found on the person of the petitioner/A.5, but when the statements are taken into consideration, they establish involvement of petitioner/A.5 in the offence and further, the investigation is still pending, thus prayed for dismissal of the petition.

It is needless to emphasis that while considering a bail application under Section 37 of (1) b (2) of NDPS Act, the court has to satisfy that there are reasonable grounds for believing that he is not guilty of offence and that he is not likely to commit any offence while on bail. When these tests are applied in the instant case, as rightly pointed out by the learned Additional Public Prosecutor, the confessional statement of A.4, and A.5 would clearly show that A.5 was very much aware that A.4 was going to purchase the Ganja in commercial quantity and himself and A.6 were asked to assist him in transportation and as a consideration, they would be paid Rs.10,000/-

each and having that knowledge, he followed A.4. Of course, the correctness of the statement of A.4 is a subject matter of trial. Be that it may, the confessional statement of A.4 for the time being would throw prima facie case against A.5. The investigation as per the C.D. file is reported to be pending and in view of the said accusation against petitioner/A.5, it is not possible for the court to draw presumption as laid down under Section 37 of (1) b (2) of NDPS Act.

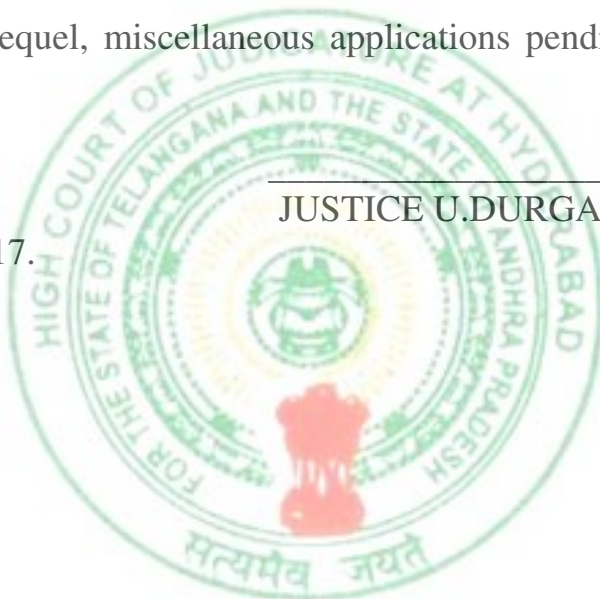
Therefore, there are no merits in this bail application to consider.

Accordingly, this Criminal Petition is dismissed.

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

Dated 9-6-2017.
Dvs

JUSTICE U.DURGA PRASAD RAO



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