

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.4131 of 2017

ORDER:

Petitioners/A.1 and A.2 filed the instant application seeking regular bail in Cr.No.12 of 2016 of Donkarai Police Station, East Godavari District whereof the petitioners allegedly committed offences punishable under Sections 8 (c) read with 20 (b) (ii) of N.D.P.S.Act.

On 16-11-2016, on receipt of credible information about illegal transportation of ganja, the Inspector of Police, Chinturu Police Station, Chinturu Circle having obtaining permission from OSD, Chinturu, went on raid to Reddy Nagar village, Y.Ramavaram Mandal and found the petitioners-accused having two plastic bags and on seeing the police, they tried to escape from that place. The C.I. apprehended them and on interrogation, came to know that accused were illegally transporting the ganja. On search of the two plastic bags, it came to light that they were transporting 50 Kgs of ganja in two plastic bags. The contraband was seized and petitioners were arrested and the matter was investigated into.

Bail is pleaded for mainly on the submission that investigation was completed and charge sheet was filed and that the accused have been in custody since 16-11-2016 and further, the police have not followed the due procedure contemplated under Section 50 of N.D.P.S.Act, and hence, search and seizure were vitiated.

While admitting that charge sheet was filed and case was registered as S.C.No.63 of 2017 on the file of First Additional District and Sessions Judge, Rajahmundry, learned Additional Public Prosecutor opposed bail submitting that the quantity of contraband seized from the accused is a commercial quantity and thereby, Section 37 of NDPS Act comes into play and further, with the filing of charge sheet, the accusation against the accused, prima facie, deemed

established. He would further submitted that there was no violation of Section 50 of the NDPS Act, because the contraband was not found on the person of the petitioners-accused rather it was found aside in two plastic bags which is manifest from the mediators' report in which case, the rigor of Section 50 has no application.

As can be seen from the copy of charge sheet filed along with the material papers, investigation is completed and charge sheet is filed and it appears that the case is registered as S.C.No.63 of 2017. Be that it may, as per the charge sheet, commercial quantity of ganja i.e., 50 kgs found in plastic bags was seized from the possession of the petitioners.

The narration in the charge sheet as well as in mediators' report would give an understanding that the contraband not seized from the person of the accused but it was seized while it was being kept in two plastic bags. As such, prima facie, Section 50 of NDPS Act has no application vide 2011(11) SCC-559 State of Rajasthan Vs. Tara Singh.

As the commercial quantity of ganja was found in possession of the accused and as Section 37 of NDPS Act poses an interdict for considering the bail plea, this Criminal Petition is dismissed.

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

JUSTICE U.DURGA PRASAD RAO

Dated 15-6-2017.

Dvs

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



CRIMINAL PETITION No.4131 of 2017

Dated 15-6-2017