

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1813 OF 2017

ORDER:

This criminal petition, under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner/A-2 to enlarge him on bail in connection with Crime No.853 of 2015-16 of Prohibition & Excise Station, Prathipadu, East Godavari District, for the offences allegedly committed by the petitioner/A-2 punishable under Sections 8(c) read with 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

The petitioner/A-2 is in judicial custody since 13.03.2016.

The petitioner was the driver of the vehicle in which the ganja was being transported as per the prosecution case and the contention of the petitioner before this Court is that he was only a driver, but the driver is also responsible in view of Section 8(c) of NDPS Act. However, the petitioner filed two criminal petitions in CrI.P.Nos.15961 of 2016 & 13326 of 2016 and both the petitions were dismissed by this Court having found no grounds to enlarge the petitioner on bail. In the present criminal petition, the petitioner renewed the same request.

However, the learned Public Prosecutor for the State of Andhra Pradesh informed that the entire trial is over and examination of the accused under Section 313 of Cr.P.C. is also over and the matter is likely to be disposed of within short time.

Though the petitioner renewed his request, but no changed circumstances have been brought to the notice of this Court and unless there are changed circumstances, the Court cannot enlarge

the petitioner on bail in view of the principle laid down by the Apex Court in the judgment reported in **State of Tamil Nadu v. S.A. Raja**¹, wherein the Apex Court, in paragraphs 8 & 9, held that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents. Therefore, on this ground also, the petitioner is not entitled to claim bail.

In view of the law declared by the Apex Court and considering the stage of trial, I find no grounds to enlarge the petitioner on bail. However, the learned I Additional District & Sessions Judge, Rajahmundry, East Godavari District, is directed to decide the matter, as expeditiously as possible, in any event not later than a month from today.

In the result, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 9th March, 2017

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¹ (2005)8 Supreme Court Cases 380

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