

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3756 of 2017

ORDER:

Petitioners/A3 and A4 filed the instant petition under Section 437 and 439 Cr.P.C. seeking regular bail in Cr.No.9 of 2017 of Mothugudem PS, East Godavari District registered against them for the offence under Section 8 (c) r/w 20 (b)(ii) (c) of NDPS Act, 1985 (for short "NDPS Act").

2) The factual matrix of the case is that on 24.03.2017, on receiving credible information regarding illegal transportation of ganja, the CI of Police along with his staff and Forest Range Officer, Mothugudem who is a Gazetted Officer, conducted road check at Godlagudem Forest Checkpost, Chintur Mandal and intercepted a Chevrolet car bearing No.HR-26-AE-6824 proceeding from Mothugudem towards Badrachalam wherein A2 to A4 were travelling 100 Kgs. of ganja stored in 5 gunny bags was found in the car dickey and the same was seized. On interrogation, it was revealed that A3 and A4 were sisters; A1 was the husband of A3 and A2 was their driver and they belonged to New Delhi. They were engaged in purchasing and illicit transportation of ganja from Badrachalam area. On that day, all the accused purchased ganja and loaded in the car and A1 was piloting the car with motorcycle and he skulked away on seeing police. Investigation is reported to be pending.

3a) Denying the allegations, learned counsel for petitioners would submit that there was violation of Section 42 of NDPS Act since in the mediators' report it was not specifically mentioned to the effect that CI of Police received information about the illicit transportation of ganja and himself recorded the same in the register. Thus, there is no record to the effect that the CI of Police received any information. Thereby, the entire search and seizure are vitiated. In that regard, he relied upon the judgment of the Supreme Court in *Karnail Singh vs. State of Haryana*¹.

b) Nextly, he would argue that petitioners/A3 and A4 do not know Telugu language and Section 50 notice and mediators' report were written in Telugu and therefore, they do not know the contents therein. Hence, there was violation of Section 50 of NDPS ACT also. He thus prayed for bail.

4) Opposing the bail application, learned Addl.P.P. would argue that commercial quantity of ganja was recovered from the accused while they were illegally transporting and hence they do not deserve bail.

a) Vehemently arguing that there was no procedural violation as alleged, he would submit that the search and seizure conducted in this case was by CI of Police, Chintur and he himself was a Gazetted Officer in terms of Section 42(2) of NDPS Act vide G.O.Ms.No.184 dated 14.02.2016. As he himself conducted search and seizure, but of course, in the presence of an independent Gazetted Officer, the question of

¹ 2009 (8) SCC 529

violation of procedure under Section 42(2) does not arise. He relied upon the judgment of the Apex Court in *Union of India vs. Satrohan*².

b) With regard to the contention of the petitioner that in the mediators' report it was not specifically mentioned that the CI of Police on receiving information about the commission of the offence, himself recorded search information in a register, learned Addl.P.P. would submit that in the mediators' report it was specifically mentioned that the CI of Police, Chintur indeed received a prior information about illicit transportation of ganja but however, it was not further specifically mentioned that he himself had noted down the contents in the register. Clarifying the same, learned Addl.P.P. would submit that personal noting down of information in the register by the Officer who received the information, is not the requirement under Section 42(1) of NDPS Act and suffice if it is got entered in the relevant record, that would make a substantial compliance of the provision. In the instant case, on receiving information, the CI of Police went to the police station and instructed the SHO to enter the information in General Diary and accordingly the same was entered by the SHO at 8 AM. He produced the GD entry dated 24.03.2017. He would thus submit that there was a compliance of noting down the information in the concerned register. Above all, since the Inspector was himself a Gazetted Officer, there was no need for him to comply with the provision under Section 42(2) of NDPS Act.

² 2008 (8) SCC 313

c) Then, regarding allegation about violation of Section 50 of NDPS Act learned Addl.P.P. would argue the said argument is not tenable because, search was conducted only in the vehicle but not on the person of the accused. The contraband was seized from the car dickey but not on the person of the accused and as such, the rigor of Section 50 of NDPS Act has no application.

d) Then, denying the allegation that Section 50 notice and mediators' report were not in the language known to the accused, he would submit that in the mediators' report it was clearly mentioned all the proceedings were explained to the accused in Hindi through one of the mediators who knows Hindi and thereafter the contents were recorded. He thus prayed to dismiss the bail application.

5) A perusal of the CD file shows that the car in which the petitioners and A2 were travelling was intercepted by the CI of Police, Chintur and on search 100 Kgs. of ganja was found in the car dickey. Hence, the case.

a) The contention of violation of procedure under Section 42 of NDPS Act is concerned, there is no substance in it. Though it is not specifically mentioned in the mediators' report to the effect that the CI of Police himself got recorded in a register about the information, still he got it entered in the GD on 24.03.2017 as is evident from copy of the GD wherein it is mentioned that CI of Police went to the police station and

instructed the SHO to record the information received by him. Hence, there was substantial compliance about the information.

b) Further, the CI of Police himself was a Gazetted Officer who conducted raid, search and seizure. Therefore, the compliance under Section 42(2) of NDPS Act is not necessary which has been clearly laid down by the Apex Court in *Satrohan*'s case (2 supra) as under:

“It is clear from the language of Sub-section (2) of Section 42 that it applies to an officer contemplated by Sub-section (1) thereof and not to a Gazetted Officer contemplated by Sub-section (2) of Section 41, when such a Gazetted Officer himself makes an arrest or conducts search and seizure.”

Therefore, there is no violation of the procedure contemplated under Section 42 of NDPS Act as alleged.

c) Then, regarding the violation under Section 50 of NDPS Act is concerned, no doubt, it appears, accused belong to Delhi and they do not know Telugu. However, in mediators' report it is clearly mentioned that on the request of CI of Police, one of the mediators, viz. Pentakota Rama Siva acted as translator between the police and accused and thereby the proceedings were conducted. The mediators' report would further show that the police have taken along with them the Forest Range Officer viz. Smt. G.Usha Rani who was a Gazetted Officer and in her presence the search and seizure proceedings were conducted. Therefore, the petitioners cannot claim violation of Section 50 of NDPS Act. Even other wise, the facts would show ganja was seized not from the person of

the accused but it was found and seized from the dickey of the car. As such, the rigor of Section 50 has no application vide *State of Rajasthan vs. Tara Singh*³. In that case, opium was seized when it was carried on the head of the accused in a gunny bag. It was held that Section 50 of NDPS Act had no application. In State of *H.P. vs. Pawan Kumar*⁴ and *Jarnail Singh vs. State of Punjab*⁵ also similar view was expressed.

6) As the commercial quantity of ganja was seized from the possession of accused, Section 37 of NDPS Act will pose as an interdict for considering the bail application. There is strong *prima facie* case against the accused and investigation is still pending. Thus, it is not a fit case to grant bail.

7) Accordingly, bail petition is dismissed.

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

U. DURGA PRASAD RAO, J

Date:15.06.2017
Murthy

³ (2011) 11 SCC 559

⁴ (2005) 4 SCC 350

⁵ (2011) 3 SCC 521