

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.798 OF 2017

ORDER:

The petitioner, who is A-1, in Crime No.195 of 2016 of Rajanagaram Police Station, Rajamahendravaram Urban District, filed the present application under Sections 437 and 439 CrPC, seeking his enlargement on bail in the above crime registered for the offences punishable under Sections 8(c) r/w.20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner is alleged to have been arrested on 18.07.2016 and since then he is in Jail.

2) The case of prosecution is that on 18.07.2016 at about 2.00 p.m., on receipt of credible information about transportation of ganja from Anakapalli forest area to Chennai, the Inspector of Police (L.W.9) along with his staff and mediators proceeded towards Chakradwarabandam village and laid a wait opposite GIET college, Rajanagaram Mandal. They noticed a Van bearing No.TN-28-AF-6075 coming from Jaggampeta side towards them. The said vehicle was intercepted and on seeing the police, A-1 to A-3, who were present in the said Van, tried to runaway. However, L.W.9 and his staff surrounded them and prevented their escape. They enquired the accused and pursuant to the statements made, about 316 Kgs of Ganja packed in 158 packets was alleged to have been recovered from the vehicle. The said Ganja was loaded in a secret compartment arranged

in the back-side of the cabin of the van and the same was being transported to Chennai. On complying with the mandatory requirements, the present crime came to be registered. After completion of investigation, the police filed the charge-sheet.

3) The main ground urged by the learned counsel for the petitioner is that since the charge-sheet was not filed within 180 days and as no permission was obtained seeking extension of time for filing the charge-sheet, the petitioner is entitled for statutory bail.

4) The same is opposed by the learned Additional Public Prosecutor. According to him, the charge-sheet was filed much prior to the expiry of 180 days which is reflected from the documents filed by the petitioner himself and as such the question of granting bail to the petitioner for non-compliance of Section 167(2) Cr.P.C., would not arise.

5) Therefore, the short question that arises for consideration is "Whether the police filed charge-sheet within 180 days or whether any application is made by the prosecution agency seeking extension of time in case the charge-sheet is not filed within 180 days ?"

6) As seen from the record, the charge-sheet is dated 29.09.2016 and the endorsement on the charge-sheet shows that it was filed on 16.01.2017. Cognizance was taken on the said date and the case was directed to be called on 24.01.2017. The docket proceedings which

are placed before the Court shows that much prior to the date of taking cognizance the charge-sheet was filed on 14.10.2016. The same was returned directing the police to furnish copy of intimation sent to the Superior Officers and also to the Senior Officer under Section 50 of the NDPS Act. Complying with the same, the charge-sheet was re-presented on 25.11.2016 and again the same was returned on 19.12.2016 stating that list of documents, as shown, are not properly filed along with the accused copies and that the enclosures Sl.Nos.1 to 3 are not filed. On 24.12.2016 it was resubmitted, after complying with the objections raised earlier. On 02.01.2017, the Court directed the office to check and putup and it was represented on the same day. On 05.01.2017 again, it was returned stating that accused copies should be filed as per list. Then it was resubmitted on 10.01.2017 and the court directed the office to check and putup. From the docket entries, which are filed by the learned counsel for the petitioner, it is clear that by 10.01.2017 all the documents came to be filed and the last representation was on 10.01.2017.

7) The accused was arrested on 19.07.2016 and the police ought to have filed charge-sheet on or before 14.01.2017. The docket entries shows that a complete charge-sheet, as required under law, came to be filed by 10.01.2017 itself. The bail application, is dated 16.01.2017 and was filed before the Court on 17.01.2017. On that day the said application was returned stating as to how the same is maintainable,

since the police filed charge-sheet and the case was numbered as NDPS SC 10 of 2017. The said objection was represented on 17.01.2017 at 3.00 p.m. It is to be noted that even much prior by the date of filing of the said application, the charge-sheet was filed in the Court. Therefore, the judgment of the Apex Court, in **Union of India through C.B.I. v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav**¹, relied upon by the learned counsel for the petitioner may not be of any help, since it was a case where the matter got adjourned asking the accused to file a rejoinder affidavit to the application filed for extension of time instead of deciding the said application on the same day. A Division Bench of this Court in **Venkataraman Kota Krishnappa Raghavendra and another v. State of A.P.**,² after considering all the authorities on the subject, observed as under :-

"Once the charge-sheet is filed within 90 days, but was returned for compliance of certain technical objections of not filing the scientific expert's opinion, is a proper compliance under Section 173(2) Cr.P.C., and the same will not confer any right on the accused to seek bail, as a matter of right. Even in a case where the charge sheet is filed after 90 days, but before accused seeks bail availing the benefit under proviso to sub-section (2) of Section 167, his indefeasible right will be extinguished on filing such charge sheet."

8) Even in the instant case, the charge-sheet was filed on 14.10.2016 but with some defects and those defects were cured from time to time and ultimately all the objections came to be complied with by 10.01.2017. Therefore, the indefeasible right, which the accused is claiming for non-filing of the charge-sheet within the

¹ AIR 2014 Supreme Court 3036

² 2009(2) ALT (CrI.)191 (DB) (AP)

period specified, cannot be made applicable to the petitioner as the charge-sheet was filed much prior to the expiry of the said period. Hence, this Court is of the view that there was proper compliance of Section 173(2) Cr.P.C., and the provisions of Section 167(2) Cr.P.C., cannot be invoked as the final report was filed prior to the expiry of time referred to under Section 36 of the NDPS Act. Hence, I see no ground to grant bail to the petitioner.

9) Accordingly, the Criminal Petition is dismissed.

Date: 09.03.2017
GM



C. PRAVEEN KUMAR, J