

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.657 of 2017

ORDER:

- 1) The petitioner, who is accused No.2, filed the present Criminal Petition, under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in Crime No.262 of 2016 of Prohibition and Excise Station, Prathipadu, registered for the offences punishable under Sections 8 (c) and 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "The NDPS Act").
- 2) The case of the prosecution is as under:
- 3) On receipt of credible information about the transportation of ganja, the Prohibition and Excise Inspector, Prathipadu along with staff and mediators proceeded to Tollgate, Krishnavaram Village, Kirlampudi Mandal and conducted vehicle check. At about 5.00 a.m. on the said date ie. 14.09.2016 one black colour Car bearing No.AP 16 CL 4849 came from Tuni. On seeing the police, the driver of the Car tried to reverse the car, but the Excise Inspector along with his staff stopped the car, in which two persons were travelling. The police searched the Car by issuing warrant of search and found 174 kgs. of ganja in the car. After complying with the mandatory requirements, the Excise officials seized the contraband under a cover of panchanama. Basing on the said search, seizure and confession, the above case came to be registered.
- 4) Heard learned counsel for the petitioner and the learned Public Prosecutor (AP) appearing for the respondent-State.
- 5) Learned counsel for the petitioner mainly submits that the allegations made in the report are all false and there is no search from

the petitioner. He further submits that the petitioner was arrested in some other case and shown as accused in this crime. Relying upon the judgments of the Apex Court in *G.Srinivas Goud v. State of A.P.*¹ (2) *Gurjant Singh @Janta v. State of Punjab*², (3) *Karnail Singh v. State of Haryana*³ and (4) *State of Karnataka v. Dondus Namasa Baddi*⁴, learned counsel for the petitioner submits that there is no compliance of Sections 42 and 50 of the Act.

6) The same is opposed by the learned Public Prosecutor contending that the allegations in the report and the panchanama do make out a case against the petitioner and it is false to state that the petitioner has been falsely implicated in this case.

7) A perusal of the remand report would show that after the arrest of the accused and while they were being taken to the police station, police jeep met with an accident. In the said accident, the accused, Prohibition and Excise Officials received injuries and one Prohibition and Excise Constable died. Since the petitioner also sustained injuries in the accident, his arrest was shown after treatment. It is true that the case diary shows two different versions with regard to circumstances under which the petitioner received injuries, but immediately after the said accident, the concerned Magistrate was informed as to how the incident took place. Therefore, the argument of the learned counsel for the petitioner that the petitioner sustained injuries in totally a different circumstance cannot be accepted at this stage.

8) Now coming to the violation of Section 50 of the Act. A reading of the panchanama clearly discloses that the accused were informed about

¹ (2005) 8 SCC 183

² (2014) 13 SCC 603

³ (2009) 8 SCC 539

⁴ (2010) 12 SCC 495

their right to be searched before the gazetted officer. Therefore, the judgments of the Apex Court relied upon by the learned counsel for the petitioner may not apply to the case on hand.

9) Insofar as the issue whether the police have intimated to their superiors before proceeding with search and seizure, it is to be noted that the same can be considered after the entire evidence has to be adduced, which can be done only during the course of trial. It is too premature to decide the said factual aspect as the investigation is still pending and no charge sheet is filed. Apart from that, huge quantity of ganja came to be recovered from the vehicle in which the petitioner and another were travelling and further, the petitioner is resident of Tamil Nadu State.

10) Having regard to the facts and circumstances of the case and taking into consideration the quantity of ganja seized, I am not inclined to grant bail to the petitioner.

11) Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

14.02.2017
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