

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5662 of 2017

ORDER:

In this petition filed under Sections 437 and 439 Cr.P.C, the petitioners/A1 and A.2 seek regular bail in Crime No.53/2016 of Maredumilli PS which was registered for the offences under Sec.8(c) r/w 20 (b)(ii)(c) of NDPS Act.

2) Seeking bail, the main plank of argument of learned counsel for petitioners is that the Inspector of Police who conducted search and seizure has not followed the procedure contemplated under Sec.52-A of NDPS Act inasmuch as the representative samples of the contraband allegedly seized from the accused were not drawn before the Magistrate but the samples were collected at the spot by the Inspector himself. Therefore, said sample cannot be used as primary evidence and hence the entire case is vitiated. In this regard, he relied upon the decision reported in *Union of India vs. Mohanlal and another*¹ to buttress his argument that samples shall be taken before the Magistrate.

3) Learned Additional Public Prosecutor opposed the bail on the submission that commercial quantity of 147 Kgs of Ganja worth Rs.7,35,000/- was seized in the presence of independent mediators when the accused were transporting the same in Maruthi Swift Car bearing No.AP 20 AJ 1166 and the search and seizure was not challenged by the petitioners and whether the sample taken by the Seizing Officer is the

¹ (2016) 3 SCC 379

representative one of the contraband seized or not and whether it violates the procedure contemplated under Sec.52-A of NDPS Act or not is an intricate question to be decided during the trial and not during the bail stage and thus prayed to dismiss the bail application.

4) This Court finds force in the submission of learned Additional Public Prosecutor. The claim of the Inspector of Police, Maredumilli PS is that on 29.09.2016 on receiving the credible information that Ganja was being illegally transported, after informing the information to ASP, Rampachodavaram and after recording the information in the General Diary, the Inspector of Police along with his staff and mediators, who are the Gazetted Officers proceeded to Maredumilli village outskirts and at about 7:00am, he noticed a Maruthi Swift grey colour car coming from Buduluru side and intercepted the car and caught hold the accused and on their confession seized about 147 kgs of Ganja in the presence of mediators by following the procedure under Sec.50 (A) of NDPS Act. To this extent, it is not disputed. As rightly argued by learned Additional Public Prosecutor, whether there is violation in taking sample this aspect needs to be discussed and appreciated during the trial. Since the commercial quantity of Ganja was seized from the possession of the accused, Sec.37 of NDPS Act poses as an interdict for considering their request for bail. As the matter stands, there is a strong *prima facie* case against the petitioners that they were illegally transporting the contraband. As such, their request for bail cannot be accepted.

5) Accordingly, the bail application is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 25.07.2017

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