

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3013 OF 2018

ORDER:

This Criminal Petition, under Sections 437 and 439 of Cr.P.C., is filed by the petitioners/Accused Nos.3 and 4, who have been in judicial custody since 19.07.2017, to enlarge them on bail in Crime No.68 of 2017, pending on the file of the Station House Officer, Jami Police Station, Vizianagaram District, registered for the offence punishable under Section 8(c) R/w.20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Heard the learned counsel for the petitioners/A-3 and A-4, learned Public Prosecutor (A.P.) appearing for the respondent-State, and perused the record.

3. The case of the prosecution, in brief, is that these petitioners along with others while transporting 30 K.Gs. of ganja, commercial quantity, the Police concerned seized the ganja from the possession of these petitioners under the cover of mediators report in the presence of mediators.

4. Learned counsel for the petitioners submits that the petitioners were found to be in possession of only 30 K.Gs. of ganja, petitioners have been languishing in jail since 19.07.2017 and finally prayed to release the petitioners on bail.

5. Learned Public Prosecutor (A.P.) brought to the notice of this Court about involvement of the petitioners in Crime No.57 of 2017, on the file of the Jami Police Station for the alleged involvement of the petitioners in transportation of 840 K.Gs. of ganja, which is being commercial quantity,

to contend that the petitioners are habitual offenders and finally prayed for dismissal of the Petition, in view of the bar under Section 37(2) of the Act.

6. As seen from the material on record, more particularly, the panchanama, the petitioners were found to be in possession of 30 K.Gs. of ganja, in contravention of Section 8(c) of the Act, which is an offence punishable under Section 20(b) of the Act, there is clear bar under Section 37 of the Act and as per Section 37 of the Act, no person accused of an offence punishable for the offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity, shall be released on bail or on their own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that they are not guilty of such offence and that they are not likely to commit any offence while on bail. This is a precondition to enlarge the petitioners on bail and when they were found to be in possession of commercial quantity of contraband, the Court has to record its satisfaction that the petitioners did not commit any offence and that there is no possibility of committing similar offence while on bail.

7. Here, in this case, the petitioners have allegedly committed similar offence in Crime No.57 of 2017 of Jami Police Station and were found to be in possession and transportation of 840 K.Gs. of ganja, which is commercial quantity, and thus registration of the aforesaid crime on the file of the same Police station clearly shows that the petitioners are habituated to transport ganja. Under these circumstances, this Court is not in a position to come to the conclusion that the petitioners have not committed any offence for the aforesaid offences under the NDPS Act and

there is possibility of committing any such offence while on bail, in view of commission of similar offence in Crime No.57 of 2017.

8. Hence, I find that this is not a fit case to enlarge the petitioners on bail in view of the bar under Section 37(2) of the NDPS Act and as such the Petition is liable to be dismissed.

9. In the result, the Criminal Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

Date: 19.03.2018.
Dsh

M.SATYANARAYANA MURTHY, J



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Date. 19.03.2018

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