

CRIMINAL PETITION No.3757 of 2018

ORDER:

The petitioner, who is an accused in Crime No.45 of 2017 of Araku Valley Police Station, Visakhapatnam District, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crime, registered for the offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State.

3. The above crime was registered against the accused for the alleged conscious possession of 22 kgs. of ganja in 14 packets.

4. The main contention of the learned counsel for the petitioner is that though it is shown as if involved crime quantity above 20 kgs. from showing of 22 kgs., it includes the stems and flowers and stems and leaves are not form part of ganja within the definition of Section 2 of the Act and from the two expressions of the Madras High Court in Criminal Appeal No.685 of 2004 dated 09.09.2009 in K.V.Ramasamy v. the Superintendent of Police Preventive Unit/Salem referring to the expression of the Bombay High Court in Raju Mohanrao Rathod v. State of Maharashtra (2008 CrI.L.J 1131) and another expression of the Delhi High Court in Criminal Appeal No.909 of 2005 dated 02.07.2012 in Basant Rai v. State in same analogy and that if that

is taken, the quantity involved is, though, above small, below commercial quantity and the rigor of Section 37 of the Act has no application and from the fact that the petitioner is in judicial custody since 05.05.2017 and he is the bread winner of the family, he is entitled to the concession of bail. It is the further contention that the samples were not properly collected from all the 14 packets but for some of them and thereby, unless collected samples from all the packets, it is not proved of ganja contained in all the packets, the prosecution may not sustain and suffice to come to conclusion even by invoking Section 37(2) rider of the Act and the petitioner is not involved in any other case.

5. Whereas, the submission of the learned Public Prosecutor is that it is a commercial quantity and twin requirements, which are conditional and not consecutive not made out and mere length of remand period is not a ground to grant bail unless Section 37 of the Act is satisfied with and so far as collection of samples concerned, if at all any prejudice from the non-observation of any such procedure, it is not a ground for considering in the bail application, but for, in trial and the two expressions placed reliance are after the full dressed trial and in appeal matters and thus it is premature to consider such contention for bail purpose, but for, prima facie material from the prosecution placed before the Court to consider from that if at all proved, the case will not end for conviction or not as a prime requirement apart from other

requirements not involved in any other case in the event for grant of future bail from the other expressions.

6. Even for the argument sake taken into consideration of samples from some of the packets not taken and from the expressions placed reliance that contraband cannot be given much credence of involvement of ganja, for, not even a case much less, from the contents of the bail application of the 14 packets are of different varieties of the contraband and some not even ganja, thus it at best may be for saying below the commercial quantity in such event of a matter to be decided in trial and even taken for consideration of below commercial quantity of 20 kgs., the punishment provided is 10 years and fine of Rs.1,00,000/- . Prima facie, the case once comes under Section 37 of the Act from the basic allegations of the prosecution case and the law is very clear that the requirements of Section 37 of the Act are mandatory and are in addition to the requirements of Section 439 Cr.P.C. and not in exclusion of the same. Hence, there are no grounds to grant bail.

7. Accordingly, the Criminal Petition is dismissed.

8. Consequently, miscellaneous petitions, if any shall stand closed.

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JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.06.2018

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