

CRIMINAL PETITION No.5563 of 2018

ORDER:

The petitioner, who is A1 in Crime No.67 of 2017 of Yeleswaram Police Station, 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 8(c) r/w 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The contraband seized was about 100 kgs. containing in four packets, each of 25 kgs. of ganja, from dickey of the car bearing No.AP 31 TC 5923. The petitioner along with 6 other accused are travelling in the vehicle and the contraband is seized. The petitioner is in judicial custody since the date of occurrence dated 16.05.2017 and went unsuccessful in the earlier attempts for getting the bail, but for, some interim bail for two months, by order, dated 16.02.2018, for some surgery, now stating later same hospital doctor advised of no necessity of such surgery.

3. It is the submission of the learned counsel for the petitioner that the police investigation completed and charge sheet is filed. Once there are 7 accused and even the contraband seized taken from the prosecution case of 100 kgs. for each of the person, it is below if divided equally, of the

required commercial quantity of 20 kgs. and above and thereby the rigor of Section 37 of the Act has no application from punishment below commercial quantity is upto 10 years and fine of Rs.1,00,000/- from Section 20 of the Act referred supra and thereby, the petitioner, who is innocent and falsely implicated and requires further medical treatment, is entitled to bail. It is also the submission that A3 and A4 were granted bail by another Bench of this Court.

4. The learned Public Prosecutor opposed the bail application stating that he vehemently opposed the bail granted to A3 and A4 and the State is contemplating to take recourse thereon, if any.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State and perused the material on record.

6. From the very prosecution case and bail application averments, there are four bags of the contraband of each of 25 kgs. It is difficult to conceive even remotely for the so called possibility of distribution of the contraband of 100 kgs among 7 persons out of 4 packets for not even a case that 7 bags are seized from 7 different persons and if at all any bail granted by another Bench of this Court with such a concession is not justified from the factual matrix, but for, that the Court cannot observe anything, much less, to consider that as a

binding precedent or persuasive value. Further, once the contraband is seized from the vehicle and the persons are travelling in the vehicle including the petitioner, there is a conscious possession contemplated by Section 54 of the Act and there is guilty state of mind contemplated by Section 35 of the Act and once, these are the presumptions that are to be rebutted by the accused and the contraband is seized from the dicky of the car with 7 persons travelling of 100 kgs., a commercial quantity and Sections 50 and 42 of the Act have no application for no personal search and the officer, who conducted the raid and the seizure with search if any, is the authorized officer and not an empowered officer by the authorized officer, there is nothing to say the twin requirements of Section 37 of the Act limitations for grant of bail are not applicable.

7. Having regard to the above, 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: 07.06.2018

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