

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.5594 and 5595 of 2018

COMMON ORDER:

The petitioners, who are A4, A2 and A6 in Crime Nos.224 and 139 of 2018 respectively of Tadipatri Town Police Station, Anantapur District, filed the present applications under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crimes, registered for the offences 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. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State.

3. The so called contraband is ganja found in the possession of the petitioners in toto of 700 gms., which is within small quantity prescribed as per the Notification Table, item 55. It clearly says upto 1 kg., small, and above 20 kgs, commercial with different punishments including for the quantity in between and the punishment provided for the offences involving small quantity is upto one year for the said possession under Section 8(c) r/w 20(b)(ii)(b)(c) of the Act. They were arrested and in judicial custody since 12.05.2018 so far as A4 and A2 are concerned and on 16.05.2018 so far as A6 is concerned. Even the so called disclosure panchanama says A2 is dealing with the collection and sale of ganja in small packets for consumption and habitual offender. So far as A4, son of A2 is concerned, there is nothing to

show about his involvement in any other case. Hence, A4 is granted bail with the following conditions:

1. The **petitioner** shall execute a self-bond for Rs.50,000/- [Rupees Fifty thousand only] with two sureties for a like sum each to the satisfaction of the learned Magistrate (concerned Court). The bond to be obtained is not only to appear before the Court for enquiry or trial and even after trial to appear before the revisional or appellate Court or other superior Court - vide decision-Pre-Legal Aid Committee, Jamshedpur v. State of Delhi 1982[2]APLJ 43(SC); so that at the stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting further presence of the accused, such recourse quickens the proceedings at other stages before that Court or other Court without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.
2. The **petitioner** shall report once in a week before the investigating officer i.e, on every Sunday between 5.00 P.M. to 6.00 P.M. and thereafter once in a month before the Hon'ble Judge concerned, after filing of charge sheet and till completion of trial/enquiry for assurance of **his** availability to safeguard the interest of the prosecution of jumping bail and interference with witnesses until further orders being passed by the learned trial Judge relaxing the same, empowering him by virtue of this order.
3. The petitioner shall attend before the Court of law regularly in enquiry and trial without fail, if not **his** bail shall be cancelled forthwith, without any further order so that, the learned Judge concerned can also issue NBW by cancelling the bail from the power under

section 439 [2] Cr.P.C. delegated by this order during pendency of proceedings before the Court.

4. The **petitioner** shall not leave the State pending enquiry/trial without prior permission of the learned trial Judge.
5. The **petitioner** shall furnish **his** full address with property and bank account particulars and submit **his** passport/s if any, after enlargement of bail on the next hearing date before the Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial Court in the event of considering the need of awarding compensation under section 357 Cr.P.C. so to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A Cr.P.C. etc.), failing which it is open to the learned Judge concerned by virtue of the power conferred by this order to cancel the bail.
6. The bail now granted is **since** a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner/s as accused for hearing/enquiry or trial, issuance of non bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the Court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Sections 441 to 446

Cr.P.C. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

4. So far as A2 and A6 are concerned, the record shows that they are involved in more than six crimes. As per Section 37 of the Act, the twin limitations for consideration in addition to the conditions to be considered under Sections 437 and 439 Cr.P.C. are in accordance with involvement of the contraband of commercial or irrespective of commercial quantity involved for the offences under Section 19 or 24 or 27A, the person shall not be released on bail unless there is a finding from the material to a *prima facie* conclusion not likely to be convicted and the other condition is not likely to commit any offence while on bail. Once so far as the second condition is concerned, as A2 and A6 are involved in more than six crimes, even from the provisions of the Cr.P.C., they are not entitled to the concession of bail.

5. Accordingly, CrI.P.No.5594 of 2018 is allowed and CrI.P.No.5595 of 2018 is dismissed.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.06.2018

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