

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6402 OF 2018

ORDER:

This is a petition filed by the petitioner-A1 Chellangi Venkateswara Rao, who is involved in crime in F.No.DRI/ HZU/ VJRU/ 48/ ENQ-4/ 2017 on the file of the Directorate of Revenue Intelligence (D.R.I.), Regional Unit, Vijayawada, dated 31.10.2017 for his illegal possession of 245.69 kg of ganja, along with other accused, for the offences punishable under Sections 20, 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, amended Act 9 of 2001 (for short 'the Act'). The petitioner was taken to judicial custody having been arrested on 01.11.2017 and since then he was lodged in the Sub-Jail, Gannavaram, Krishna District.

2. It appears that the respondent-D.R.I. did not file final report in the form of charge sheet within the statutory period of 180 days therefrom excluding the date of arrest/remand, the petitioner maintained a petition in C.F.No.1983 dated 01.05.2018 for entitlement of default bail and on the same day it was returned, stating that in view of the Special Public Prosecutor for D.R.I. filed a petition for extension of time under Section 36A(4) of the Act on 26.04.2018 beyond the remand period of 180 days and without it is being decided since posted for orders to 02.05.2018, as to how it is maintainable.

3. The submission of the learned counsel for petitioner is that as per the two Judge Bench expression of the Apex Court in Sanjay Kumar Kedia alias Sanjay Kedia v. Intelligence Officer, Narcotic Control Bureau¹ for extension of time the petition is to be filed with notice to the accused. The contention therefrom is that once notice not given even petition for extension filed within 180 days statutory period, there is an indefeasible right accrued to the accused for maintainability of the default bail application and the learned Sessions Judge was not right in its return covered by the impugned order.

4. A default bail, the Court can grant from the indefeasible right accrued to accused from the date of default in non-filing of charge sheet till filing of the charge sheet, leave about the accused is entitled to move the application once the charge sheet is not filed within the statutory time and no extension of time provided and sought. So far as the consideration of default bail once application for extension is pending concerned, a three Judge Bench expression of the Apex Court recently in Rambeer Shokeen v. State (NCT Of Delhi)² held categorically that the Sessions Judge cannot dispose of the default bail application of the accused without deciding the extension application of the prosecution agency once filed and pending. Once such is the case, at best it can be said that the learned Sessions Judge should have been numbered the default bail application also

¹ 2010 Cri. L. J. 2054 SC

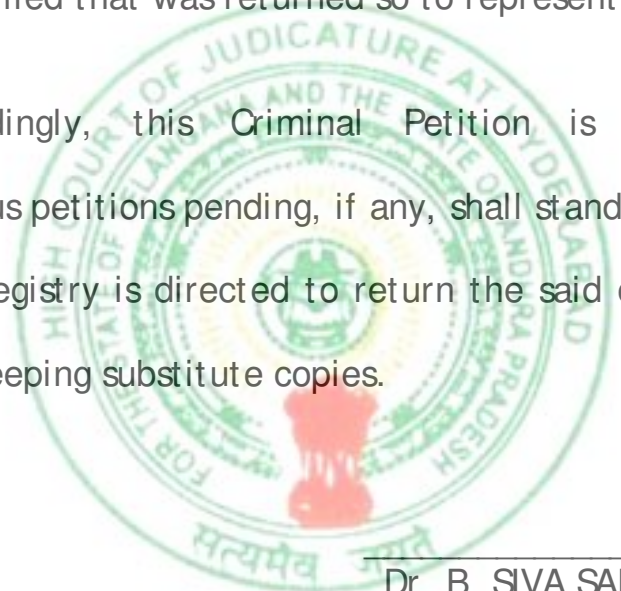
² 2018 (4) SCC 405

rather than return for its consideration after disposal of the extension of time application filed by the prosecution agency.

5. Here even there is no necessity to direct the Sessions Judge to number that petition by entertaining the representation, for the fact that the extension of time beyond 180 days already stated granted. The remedy of petitioner available thus is to impugn that extension order and if set aside then to consider any default bail entitlement from the earlier application filed that was returned so to represent to entertain.

Accordingly, this Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall stand closed.

The Registry is directed to return the said original return papers by keeping substitute copies.



Dr. B. SIVA SANKARA RAO, J

28.06.2018

Note: Issue C.C. by 02.07.2018

(B/ O)
MVA