

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5905 of 2018

ORDER :

This criminal petition filed under Sections 437 and 439 Cr.P.C. by the petitioner/accused in Crime No.2 of 2018 of Munchingput Police Station, Visakahpatnam District, registered for the offences punishable under Section 20(b) (II)(c) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') for the illegal possession of 40 kgs of contraband under seizure from his disclosure

2. Heard learned counsel for the petitioner and learned Public Prosecutor, representing the respondent-State, and perused the F.I.R., remand report, earlier bail application order and bail application averments.

3. From the very panchanama covered by the seizure from disclosure with reference to the registration of the crime, therefrom it shows on some information about illegal storage or transportation at Labburu junction of Munchingput Mandal, the police along with mediators proceeded there to conduct raids or regular checking and in that course, one person on seeing them perturbed and trying to skulk away, they got suspicion and then questioned, he made a disclosure that on seeing them out of fear he is trying to skulk away since he kept two bags containing each about 20 kgs of ganja at nearby bushes apprehending him. It is there from arrested on 28.01.2018 by seizure

of the contraband and collection of samples as per the procedure established and followed the procedure about the apprehension and arrest and produced within 24 hours for judicial custody.

4. The contentions in the bail application by the learned counsel for the petitioner are that the petitioner is implicated more than 15 cases already including Unlawful Activities Prevention Act, Arms Act, Explosive Substances Act and Public Security Act, etc., and after long struggle from merits he came out by getting bail from the long judicial remand in all those cases and the police implicated him in this case falsely to see that he will not move out in society when he is going to his village picked out unlawfully and kept in unlawful custody for more than 15 days and foisted the case.

5. That contention remained as a contention for the reason that there is no basis before the Court in the bail application material as to he was arrested earlier to 28.01.2018 or prior to that kept in unlawful custody for more than 15 days or he was picked out while going to his village to give any importance in the bail application for that contention. So far as the merits of the matter, from what is referred above containing the panchanama, F.I.R. and remand report, once there is a seizure from the disclosure of the contraband, it satisfies the factum of he is in conscious possession and guilty state of mind as contemplated by Sections 54 and 35 of the NDPS Act to rebut the presumption initially burden is on the accused. It is not only that even

coming to the contention of the mandatory provisions of the NDPS Act not followed, it is not a case of personal search from perusal of the panchanama, much less from the bail applications to comply Section 50 of the NDPS Act and it is not even a case that the person who conducted the seizure from the apprehension is not an empowered officer, but an authorized officer by the empowered officer to comply with the requirements of Section 41(2) and 42(1) of the NDPS Act. Leave about even if it is a mandatory provisions as per the settled law, it is a matter of trial to consider if at all shown prejudice so far as search non-compliance in such contingency of Sections 41 and 42 of the NDPS Act concerned. The mere fact that he is in judicial custody since 28.01.2018 is not at all a ground when the limitations contained in Section 37 of the NDPS Act from perusal of the material a reasonable conclusion, the Court has to arrive that the accused is not likely to be convicted from the prosecution material on apprehensions, apart from he may not likely to commit any other offence. Here leave about he is already shown involved in 15 cases, there is no assurance of not likely to commit another offence, apart from the fact that there is nothing to come to any conclusion of he is not likely to be convicted from the material on reasonable analysis. Having regard to the above, the petitioner/accused is not entitled to the concession of bail.

6. Accordingly, the criminal petition is dismissed. However, the police are directed to file the charge sheet early so that the accused may make a request for early trial at post-cognizance stage.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19th June 2018.

mar

