

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

CRIMINAL PETITION No.5926 of 2018

ORDER:

The petitioner, who is an accused in Crime No.115 of 2017 of Samalkot Railway Police Station, GRP Vijayawada District, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crime, registered for the offences punishable under Sections 8(c) r/w 20(b)(ii) 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 and perused the bail application averments, F.I.R., remand report and other material on record including earlier bail application dismissal order dated 29.12.2017 in Cr.I.P.M.P.No.2045 of 2017 by the learned I Additional District and Sessions Judge, Rajamahendravaram.

3. The above crime was registered on 16.10.2017 for the illegal and conscious possession of the three bags containing each 12 kgs, in total, 36 kgs. of ganja. The very case of the prosecution from the above material is that on seeing the police, the accused having three bags near to him, who tried to skulk away was apprehended and when he was questioned, he made a disclosure of the bags containing ganja of the quantity

referred supra and he had a courier to handover the bags to unknown persons at the railway station and waiting for them.

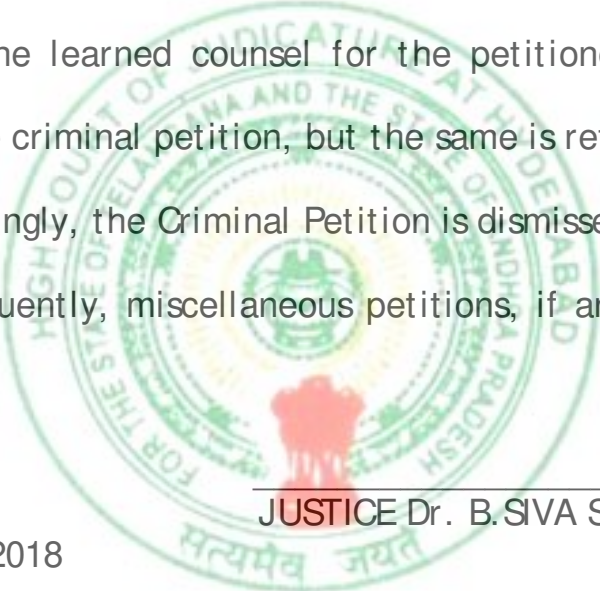
4. It is the contention of the learned counsel for the petitioner that the petitioner is innocent, there is no conscious possession, no guilty state of mind and mandatory provisions of the Act are not complied with. The other contention is that the petitioner was never allowed to be searched before the Magistrate or Gazetted officer and he was not taken before the Magistrate or independent Gazetted officer. Leave about the compliance notice given and before any Gazetted officer the seizure taken place or not, when it discloses from such compliance is required for the case on hand for no personal search and it is not the case of entire contraband is carrying in the pocket or in the person but in three bags. Further, the very panchanama discloses he already made a disclosure to meet the persons to handover the bags containing the contraband, thereby, the seizure of the contraband in the bags in his conscious possession as provided in Section 54 of the Act and suffice to draw his guilty state of mind presumption mandatory under Section 35 of the Act. It is not even a case to comply with the requirements of Sections 41, 42 of the Act, for the persons, who conducted the search is the authorized officer under Section 41(2) of the Act and not any empowered officer by that authorized officer.

5. Having regard to the above, once the two limitations, which are mandatory for grant of bail under Section 37 of the Act not shown, no way apply for nothing to hold that from the material if at all proved the accused is not likely to be convicted on its reasonable appreciation for not even a case of not likely to commit any other offence, there are no grounds to grant bail.

6. At this stage, it is to mention that after elaborate argument for sufficient time, this Court when started to dictate the order, the learned counsel for the petitioner wanted to withdraw the criminal petition, but the same is refused.

7. Accordingly, the Criminal Petition is dismissed.

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



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.06.2018
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