

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6324 of 2018

ORDER :

The petitioner is A2 among three accused in Crime No.72 of 2017 on the file of Devarapalli Police Station, Visakhapatnam District. The crime registered is for the offences punishable under Section 20(b)(i) r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, amended Act 9 of 2001 (for short 'the Act').

2. The contrabond seized is about 200 kg of ganja. The aforesaid crime was registered by the Sub-Inspector of Police, Devarapalli Police Station, which is based on information to the In-charge Station House Officer, the Head Constable, as the Sub-Inspector was on other duty, on 07.08.2017 at 8.00 A.M. about ganja and proceeded along with mediators and staff by the said Head Constable by intimation to the Sub-Inspector and the Inspector of Police, and when proceeded to the spot and while intercepting the vehicle viz., Santro GLS car bearing registration No.AP16 BU 3459 wherein the accused person traveling were intercepted, and when questioned individually they disclosed about their carrying the ganja and seized the same from their said disclosure. After collection of samples for the purpose of

chemical analysis, the ganja was seized and submitted before the Station House Officer, who registered the crime and remanded the arrested accused to the judicial custody with remand report. It is after completion of the investigation filed the final report from the FSL analysis report shows the contrabond is ganja.

3. Charge sheet is filed and the case is numbered as N.S.C. No.596 of 2017 and is pending before the learned Metropolitan Sessions Judge-cum-Special Judge for trial of offences under NDPS Act at Visakhapatnam having taken cognizance for the offence under Section 20(b)(i) r/w 8(c) of the Act.

4. The contentions in the bail application are that mandatory provisions of the Act not followed and the accused persons are innocent and were falsely implicated and the investigation is completed and charge sheet is filed and the petitioner-A2 is entitled to the concession of bail among the three accused.

5. One of the contentions is that the provisions of Section 52A of the Act not followed regarding collection of sample from the seizure of contrabond by the authorized officer provided statutorily under Sections 41 & 42 of the

Act. In fact, there is no particular procedure regarding collection of sample in the provision, but for any instructions on the administrative side, which are not the statutory force and if at all from such non-observance any prejudice caused. It is a matter during trial and it is premature to say that from that the accused is not likely to be convicted. So far as the compliance of Sections 41 & 42 of the Act are concerned, leave apart the seizure under Section 43 of the Act from the Head Constable is not the authorized officer, but if at all the empowered officer there is oral intimation whether sufficient or not and the non-compliance causes prejudice and ultimately, the accusation made end in acquittal or not are matters for trial.

6. Having regard to the above, unless it is to be concluded from the material on record that the accused are not likely to be convicted and may not commit another offence, there are limitations under Section 37 of the Act for entitlement of bail and thereby, this Criminal Petition is dismissed. It is needless to say, as per the directions of the Apex Court in **Thana Singh v. Central**

Bureau of Narcotics¹ to speed up the trial of the case by the trial Court.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.06.2018
MVA



¹ 2013(2) DCR CrI. 280 (SC)