

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8055 of 2018

ORDER:

The petitioner, who is A1 filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in Crime No.230 of 2018 on the file of Hayathnagar Police Station, Pachakonda District, registered for the offences punishable under Sections 8(1) r/ w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'the Act').

2. The petitioner by name G.Ravinder @ Ravi, aged about 53 years as per the remand report is A1 among four accused in the above crime dated 27.03.2018. He is in judicial custody since the date of registration of crime.

3. The petitioner went unsuccessful earlier in seeking bail including before this Court on merits particularly in CrI.P.No.5534 of 2018 dated 31.05.2018 and the contentions in the bail application are that the Sub-Inspector of Police, Hayathnagar Police Station while conducting vehicular check at Outer Ring Road, near Peddamberpet, allegedly stopped the car bearing No.AP 31 TVB 0939 with three members proceeding therein, found 48 bags of ganja also from the disclosure and brought the car and the ganja to the police

station and handed over to the Inspector, from which the Inspector registered the crime and conducted panchanama at the post crime registration by seizure of 95 kgs. having drawn samples duly packed, sealed by following the procedure alleged concerned, that once panchanama not prepared for recovery from the vehicle at the instance of disclosure by the accused ceases the very presumption under Section 35 of the Act and the procedure adopted is illegal and the Apex Court in Union of India v. Mohanlal¹ held under Section 52A of the Act of drawing samples at the spot of seizure by investigating officer is a violation as per Judge made law, thereby, there is illegality in procedure and there is no procedure under the provisions of the Act followed in the search and seizure concerned and thereby, there is no likelihood of ending the case no conviction from perusal of the material in arriving a reasonable conclusion of prima facie accusation as contemplated by Section 37 of the Act and consequently the bar has no application that too, when it is one of the basic principles of the criminal jurisprudence of the presumption of innocence of the accused available and thereby, entitled to the concession of bail and these aspects did not bring to the notice of this Court another Bench in dismissal of the earlier

¹ 2016(1) ACJ SC

bail application represented by another accused for the petitioner/ A1 along with A3 therein.

4. Heard Sri D.Suryanarayana, learned counsel for the petitioner and Smt.Sridevi Juvvadi, learned Additional Public Prosecutor representing the State of Telangana, who opposed the bail application and perused the material on record.

5. The report of the Sub-Inspector of Police reads that on 27.03.2018 at about 12 noon, he along with staff were conducting vehicular check at Outer Ring Road, near Peddamberpet area, he intercepted one Brezza car bearing No.AP 31 TVB 0939 in which there are three members and while checking the vehicle, found ganja packets in the dickey wrapped with plastic tape , from the smell oozing in its confirmation and when apprehended three persons and questioned as to the contents, they made a disclosure of the same is ganja and transporting to Hyderabad for selling to customers at Rs.10,000/- per Kg and they disclosed their names and identity, immediately along with the persons apprehended and the vehicle with contraband seized with their mobile phones collected they were brought to the Police Station and lodged the complaint. It is to take necessary action, the letter addressed to the Inspector of Police.

6. Now, it is to be seen, as pointed out by the learned counsel for the petitioner that there is any illegality in procedure, though law is settled that the arresting officer and the person, who registers the crime and investigates the case may be the same person, though there are some expressions always in the interest of fairness by different persons.

7. The Law is also settled from the two Judge Bench expression of the Apex Court in *State of Punjab v. Balbir Singh*² that was even followed by the Constitution Bench expression of the Apex Court in *State of Punjab v. Baldev Singh*³ that was referred and reiterated by subsequent Constitution Bench expressions and particularly from the 5 Judge Bench in *Vijaysinh Chandubha Jadeja v. State of Gujarat*⁴ that unless it is proceeded by any reliable and not mere information of a contraband in transporting through a particular reliable confirmed source if at all to proceed by making a G.D. entry at the station where responsible for the vehicular check and conducting raids, there is no necessity in anticipating any contraband covered by the provisions of the Act being found. Once such is the case, as laid down in *Balbir Singh* (supra), till then the procedure not to be followed. It is only in such interception on suspicion and confirmed about

² 1994(3) SCC 299

³ 1999(6) SCC 172

⁴ 2011(1) SCC 609

any contraband either from disclosure or from seizure from any search or like the procedure contemplated by the Act has to be followed.

8. Here, in the case on hand, there is nothing to show any personal search involved to follow the procedure contemplated by Section 50 of the Act.

9. From the very report of the Sub-Inspector of Police to the Circle Inspector referred supra, it is clear of the vehicle while taking from the dicky, there was smell emanating of contraband ganja and the 3 persons in the vehicle when questioned, they confirmed the same as ganja, which they transporting for commercial purpose, a commercial quantity, there is no, for such disclosure and its seizure requirement of any panchanama even not required to follow Section 100 Cr.P.C. but for the seizure contemplated by Section 43 of the Act and Section 102 Cr.P.C.

10. So far as the Sub-Inspector of Police and the Circle Inspector concerned, in the case they are the empowered officers as contemplated by Section 41 (2) and 42(1) of the Act. Once they are the empowered officers, they need not submit any information to the superior officers under Section 42 of the Act even otherwise mandatory, what is further

remained is after seizure any intimation is only covered by Section 57 of the Act only directory.

11. Once, the persons are in conscious possession of the contraband, which they were carrying in the vehicle dickey within the meaning of Section 54 of the Act, the Court shall presume their guilty state of mind, which is mandatory from the very wording of Section 35 of the Act. Needless to say, there is no any abdication of the procedure in the case on hand after said disclosure and seizure to say that any procedure not followed leave about such procedure must be shown a mandatory procedure and non-filing of such mandatory procedure, it must be shown a prejudice is caused and the Constitution Bench in *Vijaysinh Chandubha Jadeja* (supra) categorically held at para-31 that even the contention of Section 50 of the Act not followed of the personal search, that is the matter to be decided in trial of non-following of a mandatory procedure any prejudice caused or not and premature to decide prior to the trial. Once the Constitution Bench expression is very clear even taken for argument sake that the sample collection procedure not properly followed leave about no procedure envisaged specifically as to what to follow under Section 52-A of the Act, that is a matter to be decided in trial and premature to say as one of the grounds

much less to argue there from of there is no *prima facie* accusation still against the accused of involved in the case and likely to be convicted and not likely to commit another offence, which are the twin requirements and non-satisfaction of the twin requirements only entitles the accused to the concession of bail and not otherwise and even the recent three Judge Bench expression of the Apex Court in Satpal Singh v. State of Punjab in Criminal Appeal Nos.462 and 463 of 2018 dated 27.03.2018 categorically held even anticipatory bail cannot casually be granted under Narcotic Drugs and Psychotropic Substance Act and it is the duty of the Court even to grant bail to apply mind and come to a specific conclusion by assigning reasons how Section 37 of the Act bar of the twin requirements have no application. Once such is the law, it must be shown by the accused of the bar under Section 37 of the Act has no application specifically without which it cannot be contended of entitlement to the bail as limitations for grant of bail under Section 37 of twin requirements of non-application to be specified are in addition to the limitations provided in Cr.P.C. as per the settled law. The law on this aspect is scanned by catena of expressions by this Court including with reference to Noor Aga

v. State of Punjab⁵ in Intelligence Officer v. M. Shivakumar (Crl.R.C.No.1506 of 2014 dated 15.09.2014), Raju Anthony v. State of Telangana (Crl.P.No.8441 of 2014 dated 04.08.2014), Intelligence Officer, Narcotics Control Bureau v. Poojari Muralikrishna (Crl.P.No.4795 of 2014 dated 19.06.2014).

12. Even in relation to the collection of samples and the procedure and any standing orders will not bind concerned, Crl.P.Nos.3930 and 5050 of 2018 dated 08.06.2018 in Satyaboina Chandrasekhar v. the State of Telangana on the scope of Section 67 of the Act, leave about earlier expression in Crl.P.No.9498 of 2014 in G.Sandeep Reddy v. the Intelligence Officer, Narcotic Control Bureau and Crl.P.No.2900, 3020 and 5814 of 2018 common order dated 19.06.2018 and further on the scope of what are the reasonable grounds to be appreciated under Section 37 of the Act for entitlement to grant of bail sought by the accused if any to be shown to consider by Court, which are referred in the earlier expressions supra and further, way back in Union of India v. Rattan Mallik @ Habul⁶ categorically held that the twin requirements set out in Section 37(1)(b)(i) have to be satisfied and the said conditions are cumulative and not

⁵ LAWS SC 2008-7-158

⁶ 2009(2) SCC 624

alternative and that must assign reasons of how the bar is not applicable from reasonable grounds on satisfaction and find fault with the High Court in granting bail from seizure of the contraband with possession of commercial quantity even with observation merely because he is in incarnation for more than 3 years when it is not a ground to grant bail.

13. Even coming to the so called disclosure by the persons apprehended is hit by Section 25 of the Evidence Act concerned, it is not hit by in fact Section 25 of the Evidence Act, as there is a fact discovered from the accused shows possession of the contraband which they disclosed and it comes under Section 27 as an exception to Section 25 of the Evidence Act leave about even Section 25 of the Evidence Act will not over ride the special law covered by Section 67 of the Act and what the counsel for the petitioner contending based on the expression of the Apex Court in Raj Kumar Karwal v. Union of India⁷ is no longer available after the expression of the Apex Court in Kanhaiyalal v. Union of India⁸ leave about subsequent expression in Union of India v. Bal Mukund⁹ and this Court not only in Raju Anthony v. State of Telangana(Crl.P.No.8441 of 2014) dealt with this issue but also in more elaboration including by referring to Noor Aga

⁷ 1990(2) SCC 409

⁸ 2008(4) SCC 668

⁹ 2009(12)SCC 161

(supra) and so far as collection of samples concerned, State of H.P. v. Pawan Kumar¹⁰ and State of Rajasthan v. Paramanand¹¹ but also in the recent expression in Satyaboina Chandrasekar(supra) and referring to it in Mohd. Younus v. Raj Kumar(Crl.P.Nos.2900, 3020 and 5814 of 2018, dated 19.06.2018).

14. Accordingly, the Criminal Petition is dismissed. However, the above observations will not prejudice the interest of the parties during trial.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date:08.08.2018
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L.R.copy to be marked - yes

¹⁰ 2005(4) SCC 350

¹¹ 2014(5) SCC 345

* HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Between:

G.Ravinder @Ravi

...petitioner

Vs.

The State of Telangana

... Respondent

!Counsel for the petitioner : Sri D.Suryanarayana

Counsel for the Respondent: learned Public Prosecutor

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>Head Note:

? Cases referred:

¹ 2016(1) ACJ SC

² 1994(3) SCC 299

³ 1999(6) SCC 172

⁴ 2011(1) SCC 609

⁵ LAWS SC 2008-7-158

⁶ 2009(2) SCC 624

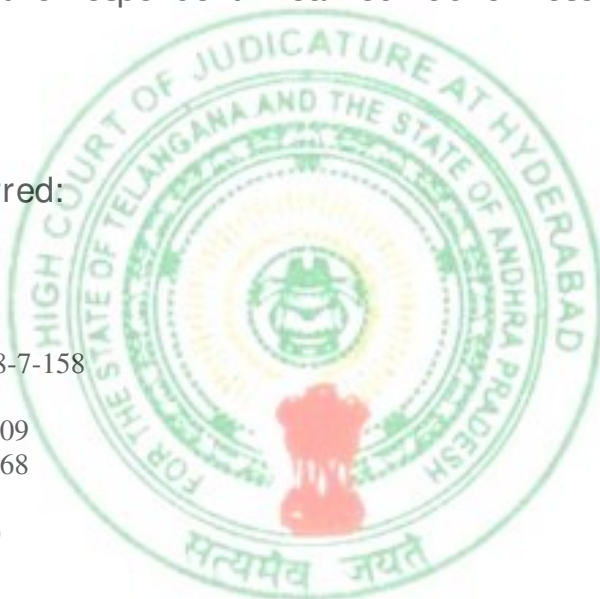
⁷ 1990(2) SCC 409

⁸ 2008(4) SCC 668

⁹ 2009(12) SCC 161

¹⁰ 2005(4) SCC 350

¹¹ 2014(5) SCC 345





IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CRIMINAL PETITION No.8055 of 2018

Between:

G. Ravinder @Ravi

...petitioner

Vs.

The State of Telangana

... Respondent

DATE OF JUDGMENT PRONOUNCED: 08.08.2018

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
- 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
- 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No