

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.8650 and 8714 of 2018

COMMON ORDER :

Heard the learned counsel for the respective petitioners A.1 in CrI.P.No.8650 of 2018 and A.2 in CrI.P.No.8714 of 2018 of same Cr.No.66 of 2018 of Pithapuram Police Station, East Godavari district, registered for the offences punishable under Section 8© read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985, amended Act 9 of 2001 (for short 'the Act'), NDPS Act.

2. As per the case of prosecution on 06.04.2018 at about 2.00 P.M. on information about illegal transportation of Ganja from Moolapeta side to Pithapuram town side, the Inspector of Police having submitted representation to the Sub Divisional Police Officer, while conducting vehicular checking on the tar road near Balaji Gardens lay out on the eastern side of Pithapuram town, apprehended auto bearing registration No.AP05 TU 2418 in the presence of mediators and the person sat on the rear seat with one bag fled away out of catch by the police officials, on search of the auto, there was A.1 in it and 3 luggage bags when verified it disclosed as Ganja weighing 29kgs worth Rs.58,000/- and seized the same, arrested the A.1 after recording his disclosure statement under cover of panchanama and so far as A.2 who fled away is concerned, on disclosure of A.1, during investigation on 06.04.2018 they apprehended the A.2 and on interrogation, he revealed that he hid a Ganja bag in the dilapidated staff quarters near to Pitapuram Sugar Factory and after drafted panchanama they went to the above place and seized the same which weighed about 5.750 grams and after following due process submitted the A.2 to judicial custody.

3. The contention of the respective petitioners is the case is false and the petitioners are innocent. So far as the A.1 concerned, it is vehemently argued in length by its learned counsel saying the power under Section 37 of the NDPS Act, has no application and there is nothing to show conscious knowledge about the bags kept in the auto traveling by A.2 at the time of interception contained Ganja and thereby once he has no knowledge about the contents of baggage, he cannot be held liable from prosecution is unsustainable but for to cite him as a witness and once there is no conscious possession and there is no guilty set of mind to draw any presumption under Section 54 and 37 of the NDPS Act. The other contention is that the quantity of Ganja seized from the A.2 was only 5.750grams but for the so called alleged confession there is no material to say that he fled away from the auto. Thereby for not a commercial quantity, Section 37 of the Act has no apply.

4. The learned Public Prosecutor opposed the bail application.

5. Heard and perused the material on record. It is difficult to accept the contention of the learned counsel for the accused persons reproduced above. when it is a contraband of Ganja in conscious possession of both of them of commercial quantity, for not able to show the twin conditions of reasonable grounds to believe that the accused is not likely to be convicted and he is not likely to commit any offence while on bail, which are the conditions cumulative and needless to say, not alternative & the Section 37 of the Act has no way apply to the case from the material not entitled to the concession of bail.

6. Having regard to the above, both the Criminal Petitions are dismissed. Needless to observe that the Investigating Officer shall complete the investigation and file final report within four weeks.

Thereafter the accused is entitled to make a request to the trial Court for early trial of the case as per the expression of the Thana Singh v. Central Bureau of Narcotics¹. Further the above observations no way prejudice any right of the petitioners even future right if shown any changed circumstances.

7. Miscellaneous petitions, if any, pending in these Criminal Petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 24.08.2018
Vvr



¹ 2013(2) DCR CrI. 280 (SC)