

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

CRIMINAL PETITION No.8962 of 2018

ORDER:

The petitioner/ accused filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in Crime No.25 of 2018, dated 09.04.2018 on the file of Arakuvalley Police Station, Visakhapatnam District, registered for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'the Act').

2. Heard the learned counsel for the petitioner and the learned Special Assistant Public Prosecutor representing the State of Andhra Pradesh and perused the material on record.

3. The case of the prosecution as per the FIR based on seizure panchanama and from the remand report is that on 09.04.2018 at about 4.00 p.m. when the police party were conducting patrolling near RTC Complex, Arakuvalley, they found the petitioner running on seeing the police with bags and they caught hold of him and when questioned he disclosed his name, address and identity and that he is carrying ganja in 8 pillow bags and one hand bag and the same were seized from his possession under cover of panchanama in registration of crime by showing the said contraband as per the disclosure secured of 21 kgs. of ganja, secreted in the baggages, which he is carrying on the contraband in the packages and when they weighed, they found 21 kgs. and collected samples from the baggages as 9 items with 27 packets in all affixed slips and on personal search in the presence of the

Tahsildar after appraising of the same found Rs.1100/- in his person from the pockets that was also seized under panchanama and was submitted to judicial custody and he is in judicial custody since then.

4. The petitioner went unsuccessful in seeking bail from the bar under Section 37 of the Act from the involvement of commercial quantity as per the observation of the learned Metropolitan Sessions Judge in CrI.MP.No.1127 of 2018 dated 13.06.2018.

5. In the present bail application the contentions are mandatory provisions not followed and the so called search and seizure otherwise illegal including collection of samples and it is a false case foisted and he never involved in any such offence and he is entitled to the concession of bail and the bar under Section 37 of the Act has no application and the learned Metropolitan Sessions Judge did not properly appraise the case.

6. The learned Public Prosecutor opposed the bail application with instructions from the Case Diary including from panchanama and the police investigation with charge sheet stated filed on 20.06.2018 and allotted N.S.C.No.219 of 2018.

7. Leave about any non-compliance of the mandatory provisions and any prejudice thereby caused or part of the defences available to him. Prima facie, once there is material and the Court is not able to come to the conclusion of not likely to be convicted and not likely to commit another offence, which are

the two mandatory twin requirements and not even alternative, there is nothing to the entitlement of bail but for to direct the learned Special Judge to complete the trial as early as possible, preferably, within four months from the date of receipt of copy of this order, as per the directions of the Apex Court in *Thana Singh v. Central Bureau of Narcotics*¹.

8. Accordingly, the Criminal Petition is dismissed.

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

Date: 05.09.2018
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JUSTICE Dr. B.SIVA SANKARA RAO



¹ 2013(2) DCR CrI. 280 (SC)