

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRI.P.No.10998 of 2018

ORDER:

This petition under Sections 437 and 439 of Cr.P.C., is filed to enlarge petitioners/A1 to A3 on bail in connection with Cr.No.166 of 2018 of Bhadrachalam Town Police Station, Bhadradi Kothagudem District, registered for the offence under Section 8(c) read with Section 20(b) of NDPS Act, 1985 (for short 'the Act'). The petitioners are in judicial custody since 26.07.2018.

2. The case of the prosecution is that all the accused were jointly found in possession of 31.595 kgs of ganja, in three bags, worth Rs.94,800/-. Thus, the contraband seized from the possession of the accused is commercial quantity. Since the recovery of contraband is not independent from each of the petitioners/accused, Section 37 of the Act will apply to the present facts of the case and therefore, this Court cannot grant bail on mere asking when the petitioners were found in possession of more than commercial quantity.

3. According to Clause (b)(ii) of Section 37 of the Act, where the Public Prosecutor opposes the application, if the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. A plain reading of Section 37(1)(b) of the Act is that the Court must adopt negative attitude towards bail but turn positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence under the Act and secondly

that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. These two tests are cumulative. Therefore, to grant bail to the accused in the crime involving commercial quantity, the Court has to satisfy the reasons under Clause (1)(b) of Section 37 of the Act. But, in the present case, there are no such circumstances to conclude that the petitioners are not likely to commit such offence while on bail and that there is no *prima facie* material to conclude that they did not commit any offence. Therefore, I find no ground to enlarge the petitioners on bail at this stage.

4. In the result, the Criminal Petition is dismissed.

5. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

19th October, 2018

sj

M. SATYANARAYANA MURTHY, J