

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

**Criminal Petition No.11386 of 2018**

**ORDER:**

The petitioner is the non-accused in N.S.C. No.282 of 2018 on the file of the learned Metropolitan Sessions Judge-cum-Special Court for NDPS Cases at Visakhapatnam, taken cognizance for the offences punishable under Section 8 read with 20, 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, amended Act 9 of 2001 (for short 'the Act').

2. The sum and substance of the accusation shows there was about 800 kgs of ganja concealed by keeping 160 plastic drums over it and those plastic drums contain liquid substance of FL 139 and the powdery substance in the HDPE bags of FL 926 XV of the invoice No.SINV-1718-3995 dated 11.12.2017. The case of the petitioner-SNF (India) Private Limited, represented by its General Manager-M & L, Visakhapatnam in the present petition is that the consignment is not sending the liquid substance and the powdery substance which are the chemical substances neither narcotic drug nor Psychotropic substance nor even controlled substance for manufacturing any of these and unconnected with it and if at all the driver of vehicle covered by the consignment to be taken to Uttarakhand and in the transit allowed any ganja, for which admittedly the petitioner is not the accused in the case filed by the Directorate of Revenue Intelligence (for short, 'the D.R.I.') and the chemical substances

(liquid and powdery) should not have been seized and as such same is liable to be released, and the learned trial Judge went wrong in dismissal of the petition in Crl.M.P.No.2270 of 2018 by order dated 15.10.2018 for interim custody sought under Section 457 Cr.P.C.

3. Whereas, in the counter filed by the learned Special Public Prosecutor for D.R.I., Andhra Pradesh in opposing the petition and supported the order of the learned Metropolitan Sessions Judge at Visakhapatnam stated that the chemical substance used in concealment of the ganja is liable to be confiscated and thus cannot be returned and the petition is liable for dismissal.

4. The order of the learned Sessions Judge reads particularly from paragraph No.5 that the entire consignment consists of 160 plastic drums loaded in the vehicle (referred to as carboys in the invoice) and 280 HDPE bags containing powdery dyeing material used in chemical manufacturing belonging to the petitioner company claimed even as not related to the crime in seeking to the release and that this argument has no legal force because the material belonging to the petitioner company and used for concealing which is narcotic drug of 804 kgs referred supra, which is a dry ganja, and thereby the vehicle as well as the powdery chemical substance and liquid also liable for confiscation, and the petition is devoid of merits.

5. Heard the learned counsel for petitioner and the learned Special Public Prosecutor for D.R.I. and perused the material on record.

6. Section 61 of the Act relevant in this regard reads as under:

**“Confiscation of goods used for concealing illicit drugs or substances: -**

Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance] which is liable to confiscation under this Act shall also be liable to confiscation.

No doubt, that is an enabling provision for any material used to conceal the narcotic drug or psychotropic substance; even for that matter any controlled substance used for manufacturing psychotropic substance is liable for confiscation. It is not automatic, but for after trial. A perusal of the petition averments show the shell life of the liquid and powdery chemical substance as referred supra not even the controlled substance for psychotropic substance manufacturing is going to expire by October/November, 2018. If the consignment value of the stock of about Rs.21,02,760/- will be of disuse, it will be with no practical utility after that. Then even in the event of success of the same is not liable for confiscation during trial, the petitioner will suffer the grave financial loss and injustice. It is not even a case of the learned Special Public Prosecutor representing the D.R.I. that they are going to conduct auction before expiry of the shell life of the chemical substance. In fact, the petitioner (non-accused), who is undisputedly owner of the stock in question undisputedly not even the controlled substance, wants to better utilize the stock and wants to deposit the entire consignment value, if at all the stock is liable to be

confiscated, the value of the stock that to be deposited can be confiscated. Once such is the case, there is nothing to detain the stock by refusing interim custody to make it value less and junk, when it can be better utilized by the petitioner owner and the vendee in question from the petitioner of the consignment to Uttarakhand, but for to release subject to deposit of the said amount so that the Court can keep the same in deposit and during trial decide the said amount is liable to be confiscated then in lieu of the stock liable to be confiscated to confiscate the amount and otherwise to pass final disposal order for return of the money to the petitioner or not as the case may be.

7. Having regard to the above and by following the guidelines of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat**<sup>1</sup>, the learned Metropolitan Sessions Judge at Visakhapatnam is directed to cover the video and photograph of the stock in question in the presence of the learned Magistrate and handover the same to the petitioner, subject to deposit of an amount of Rs.21,03,000/- (Rupees Twenty one lakh and three thousand only) to the credit of the Sessions Case to invest by the Metropolitan Sessions Judge in an interest yielding deposit with provision to encash as and when required, so that if at all the same is liable for confiscation to confiscate the amount to the State, and if not liable for confiscation to return to the petitioner if at all entitled to the entire amount or any part of it so as to

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<sup>1</sup> 2002 (10) SCC 283

pass appropriate orders therefrom. The petitioner need not produce back the stock as he can better utilize before expiry of the shell life or otherwise and the photographs and video being taken can be exhibited during trial, for which by virtue of this order there will not be any objection even by the accused.

Accordingly, this Criminal Petition is allowed. Miscellaneous petitions pending, if any, shall stand closed.

06.11.2018  
MVA



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**Dr. B. SIVA SANKARA RAO, J**