

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.P.No.599 of 2019

ORDER:

The petitioner is the accused in Cr.No.175 of 2018 of P.S., Prohibition & Excise, Quthbullapur, R.R.District that was registered for the offences punishable under Sections 8 (c) r/w 20 (b) (ii)(C) of NDPS Act (for short 'the Act'). The petitioner was found in possession of allegedly brown colour bag with 1.238 kgs of ganja and when questioned disclosed about transporting the same from Visakhapatnam to make it small packets to sell several. He was arrested and submitted to judicial custody from the time intercepted of him on 21.10.2018 within 24 hours and he went unsuccessful in getting regular bail. After 60 days there from moved from the learned Metropolitan Sessions Judge, Cyberabad for grant of default bail saying that the quantity involved is though above small and below the commercial quantity and the same is punishable below 10 years as contemplated by Section 167 Cr.P.C and as per 36-A (4) of the Act, what is provided is 90 days to read as 180 days for entitlement of default bail unless extended on the application of the Public Prosecutor showing special circumstance that remand period beyond 180 days has no application for the offences is not one punishable under Section 19, 24 or 27-A or for any commercial quantity and thereby entitled to default bail.

Learned Sessions Judge, when Public Prosecutor opposed the same, dismissed the same saying that limitation of granting default bail specified in clause (b) of sub-section (1) are in addition to the limitation under Cr.P.C or any other law for the time being in force and on granting bail it should be treated as limitation as thereof to 90 days where they occur, shall be construed as reference to 180 days subject to

further extension if any under Section 36 (4) of the Act and thereby not entitled to the default bail. Impugning the order of the learned Sessions Judge in CrIM.P.No.5910 of 2018 dated 17.01.2019, this petition is filed.

Heard counsel for the petitioner and the Public Prosecutor representing the State and perused the impugned order and other material on record.

A perusal of the very saying under Section 36-A(4) is very clear that it is only for specified offences or offences involving commercial quantity, 90 days to be construed as 180 days and said period can be extended when the learned Public Prosecutor show any special reasons and same special law has no application for the offences punishable other than commercial quantity and other than those covered by the 3 sections specified supra and in the case on hand there is neither involvement of commercial quantity nor quantified by Sections 19, 24, 27-A thereby and from the General Rules, the entitlement of punishment prescribed by the statute is extendable upto 10 years and the period prescribed to complete the investigation is 60 days. The same statute is available to the petitioner that was not properly appreciated by the Sessions Judge and dismissed the application for default bail.

Even, it is not a case of charge sheet filed as on date, default bail moved thereby by following the expressions by this Court referring to Constitution Bench expressions of the Apex Court in ***Rambeer Shokeen v. State (NCT of Delhi) (9)***¹ besides ***Rakesh Kumar Paul vs. State of Assam (6)***² as referred in ***Avva Venkata Rama Rao v. State***

¹ (2018) 4 SCC 405

² 2017 (3) ALT (CrI.)141 (SC)

of A.P., Kadapa District and Deputy Superintendent of Police³ and also in NDPS Act case in similar circumstances covered in CrI.R.Nos.221 and 222 of 2017 dated 25.01.2017.

The petition is thus allowed granting default bail subject to condition of executing self bond of Rs.50,000/- with two sureties for a likesome each to the satisfaction of learned trial Judge. No order as to costs.

Miscellaneous petitions, pending if any, shall stands closed.

Dr. B.SIVA SANKARA RAO J,

06.02.2019
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³ 2018 (2) ALT (CRI.) (A.P) 261 (S.B)