

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2942 of 2019

ORDER:

1. The petitioners/accused Nos.1 and 2 filed the present application under Sections 437 and 439 of Criminal Procedure Code, seeking to grant bail to them in N.CBF No.48/1/7/2018/NCB/SUB-ZONE/HYD of Narcotics Control Bureau, Hyderabad Sub-Zone, which was registered for the offences punishable under Sections 8 (c) read with 20 (b), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act").

2. The case of the prosecution is that on 27.09.2018 at about 6.45 P.M., a team of Narcotics Control Bureau, Hyderabad Sub-Zone along with panch witnesses, mounted surveillance at Duddeda tollgate near Siddipet for observation of the vehicles movement and at about 7.45 P.M., one TATA vehicle bearing No. AP 05 TM 0931 reached at Duddeda Tollgate. On seeing the NCB officials, the driver did not stop the vehicle and drove it in a rash and negligent manner without paying toll fee. With the assistance of Ramayampet Police, the said vehicle was intercepted at D.Dharmaram Cross Road, Ramayampet, and found the petitioners sitting in the said vehicle. On enquiry, they confessed that they are transporting the Ganja and they voluntarily took out 94 packets containing 473.5 K.Gs. of Ganja from the roof of the carrier of the vehicle. After

following the due procedure, the officials seized the said Ganja under a cover of panchanama. Basing on the search and seizure, the above case came to be registered.

3. Heard learned Counsel for the petitioners and learned Special Public Prosecutor appearing for the respondent-State.

4. Learned Counsel for the petitioners submits that for the last 200 days the petitioners are in jail and till date no charge sheet was filed. Since no charge sheet was filed within statutory period of 180 days, the petitioners are entitled to be released on bail under Section 167 (2) of the Cr.P.C. It is further submitted that the petitioners never committed any offence and they are falsely implicated. It is also submitted that the petitioners are sole earning members in their respective families and they are having old aged parents. It is further stated that entire investigation in the above case is completed except filing of the charge sheet and that the petitioners are ready to abide by any conditions imposed by this Court while enlarging them on bail.

5. Respondent/complainant filed counter and vehemently opposed the bail application stating that huge quantity of Ganja i.e., 473.5 kgs., came to be seized from the possession of the petitioners. It is further stated that if the petitioners are released on bail, there exists every chance of tampering with the evidence and they may

indulge in similar type of crimes. Hence, the petitioners are not entitled for bail.

6. The learned Counsel for the petitioners mainly argued that the petitioners are entitled for a default bail as the prosecution failed to file the charge sheet within the stipulated time and for the last 200 days the petitioners are in jail. In support of his contention, he relied on a decision of the Apex Court in *Union of India through Central Bureau of Investigation v. Nirala Yadav Alias Raja Ram Yadav Alias Deepak Yadav*¹.

7. In this case, charge sheet has already been filed within the stipulated period on 20.02.2019. Moreover, in *Pragyna Singh Thakur vs. State of Maharashtra*² the Apex Court held as under:

“The right under Section 167 (2) Cr.P.C. to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet. In other words, even if an application for bail is filed on the ground that charge sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost. After the filing of the charge sheet, if the accused is to be released on bail, it can be only on merits.”

¹ (2014) 9 SCC 457

² (2011) 10 SCC 445

8. In the instant case, charge sheet was already filed within the statutory period of 180 days and as such the petitioners are not entitled to be released on bail under Section 167 (2) of the Cr.P.C. and, therefore, the decision relied upon, by the learned Counsel for the petitioners in *Union of India through Central Bureau of Investigation v. Nirala Yadav Alias Raja Ram Yadav Alias Deepak Yadav*, is not applicable to the case on hand.

9. Now coming to the merits of the case, admittedly, huge quantity of Ganja i.e. 473.5 kgs., which is more than the commercial quantity, was seized from the possession of the petitioners while transporting the same in Car. Further, the Ganja was seized basing on the confessional statements of the petitioners. If the petitioners are released on bail, there is every chance of tampering with the evidence and they may indulge in similar type of offences in future.

10. Having regard to the nature of serious allegations levelled against the petitioners, gravity of offences and the quantity of Ganja recovered from the possession of the petitioners/A1 and A2, I am not inclined to grant bail to the petitioners at this stage.

11. Accordingly, the Criminal Petition is dismissed.

JUSTICE G. SRI DEVI

02.08.2019
Gkv/Gsn.

