

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE FIFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION NO: 6812 OF 2020

Between:

Boda Thirupathi, S/o. Soethya, aged 29 years, Occ. Tractor Driver, R/o. Mansingh Tanda, H/o. Kodishalakunta Village, Mulugu, Warangal District

...PETITIONER/ACCUSED -3

AND

State of Telangana, rep. by its Public Prosecutor, High Court, Hyderabad through its Station House Officer, PS Mulugu Warangal District.

...RESPONDENT/COMPLAINANT

Petition under Section 437 & 439 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to enlarge the petitioner on bail in connection to the Crime No. 246 of 2020 on the file of Station House Officer, Mulugu Police Station, Mulugu, Warangal District on such terms and conditions.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri L.V. RAMANA RAO, Advocate for the Petitioner and the Public Prosecutor (TG) on behalf of the Respondent.

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION No.6812 of 2020

ORDER:

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, is filed seeking grant of regular bail to the petitioner herein, who is arrayed as accused No.3 (A-3) in Crime No.246 of 2020 on the file of Mulugu police station, Warangal District. The offences alleged against the petitioners are under Section 8(c) read with Section 20(b) of NDPS Act, 1985.

2. Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent State and perused the record.

3. With the consent of the learned counsel appearing for the parties, the criminal petition is taken up for hearing through Video Conferencing in the virtual Court today, i.e. 05.01.2021.

4. Learned Counsel for the petitioner would submit that the petitioner is only a driver of the tractor who was standing and talking to accused No.1 and 2 when the respondent authority conducted search and apprehended accused no.1 and 2, who were actually transporting the prohibited Narcotic substance. Learned Counsel for the petitioner would thus, submit that the petitioner is not involved in the commission of the offence. It is thus, submitted by the learned Counsel for the petitioner that he may be enlarged by granting regular bail.

5. *Per contra*, learned Additional Public Prosecutor by drawing attention of this Court by the remand report would submit that the

petitioner herein, who is arrayed as accused No.3 is the actual person who is involved in purchasing of the ganja from accused Nos.1 and 2 for consideration, for doing business in the prohibited Narcotic substance. Learned Additional Public Prosecutor would also submit that while accused Nos.1 and 2 were apprehended by the respondent authorities, the petitioner/A-3 is escaped from the scene of offence on seeing the respondent authority. It is also submitted that the total quantity of the contraband seized was weighing about 54 kgs., packed in 27 packets of 2 kgs each, which is more than the commercial quantity. Learned Additional Public Prosecutor would further submit that the irrespective of the quantity whether commercial or small quantity, the offences are non-compoundable under the provisions of the NDPS Act. Learned Additional Public Prosecutor would further submit that the petitioner is involved in dealing in purchase from the accused Nos.1 and 2 in the above crime and selling the same to intending purchasers at higher price, on regular basis and thus, would have to be considered as peddler. The learned Additional Public prosecutor would submit that in view of the fact of the petitioner dealing in the prohibited substance regularly, the petitioner does not satisfy the twin condition as enumerated by the Apex Court in **Union of India v. Sanjeev V. Deshpande**¹ for granting bail.

6. Having regard to the submissions made as above, since the offence alleged against the petitioner is that of trading i.e. purchase and sale of prohibited Narcotic substance, which activity the petitioner seems to have been involving himself on regular basis, the twin condition as stipulated in **Union of India v.**

¹ (2014) 13 SCC 1

Sanjeev V. Deshpande² as reiterated further in **State of Kerala v. Rajesh**³, do not stand satisfied to enable this Court to come to the conclusion of existence of reasonable grounds as stipulated in Section 37 of the NDPS Act, which begins with non-obstante clause and being a special enactment, would have over riding effect, over the provisions of general Act namely Criminal Procedure Code, for grant of bail.

7. In view of the above, the present Criminal Petition is without merit and is accordingly, dismissed, reserving liberty to the petitioners to file fresh petition(s) at an appropriate stage in accordance with law, if so advised. It is clarified that the observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter.

8. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

²(2014) 13 SCC 1

³2020 SCC online SC 81

SD/-N. CHANDRASEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To

1. The Judicial First Class Magistrate, Mulugu, Warangal District.
2. The Superintendent, Central Jail, Warangal.
3. The Station House Officer, Mulugu Police Station, Mulugu, Warangal District.
4. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad.
5. One CC to Sri L.V. Ramana Rao, Advocate [OPUC]
6. Two CD Copies



HIGH COURT

DATED:05/01/2021



ORDER

CRLP. No. 6812 of 2020

Dismissing the Crl. Petition.

8
KMA
20/01/2021