

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1817 OF 2022

O R D E R:

This Criminal Petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking to enlarge the petitioners/accused Nos.3 to 5 on bail in connection with Crime No.170 of 2021, on the file of Ghanpur (M) Police Station, Warangal District, registered for the offence punishable under Section 8(c) read with 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "N.D.P.S.Act, 1985").

2. Heard learned counsel for the petitioners/accused Nos.3 to 5 and learned Assistant Public Prosecutor for the respondent-State. Perused the record.

3. The case of the prosecution is that petitioners/accused Nos.3 to 5 alleged to have been found in possession of 405 Kgs. of dry Ganja on 21.12.2021, while they were transporting the same in two Cars belong to accused Nos.1 and 2 from Chelpur side to Hyderabad, in order to sell the same for higher price and the Police, Ghanpur (M) Police Station, Warangal District, have seized the same from the possession of the petitioners herein.

4. The petitioner Nos.1 and 2 herein, who are accused Nos.3 and 4 in the present Crime moved an application for default bail under

Section 167(2) of Cr.P.C., before the Special Sessions Judge for NDPS Cases-cum-Principal Sessions Judge, Jayashankar-Bhupalpally District, vide CrI.M.P.No.23 of 2022 on the ground that after completion of 180 days neither the Police filed charge-sheet nor sought extension of time for filing charge-sheet. The learned Special Sessions Judge vide order dated 06.07.2022 having considered the said application dismissed the bail petition on the following grounds:

- i) that the gravity and nature of offence involves commercial quantity and transporting Narcotic Drugs i.e. Ganja causing harm to the society;
- ii) that the investigation is still in progress and if the petitioner Nos.1 and 2/accused Nos.3 and 4 were enlarged on default bail, they would be escaped and jumped on default bail and they will not cooperate with the investigating agency;
- iii) that they would further involve in similar offences and to prevent the illegal business of the petitioners.

5. As seen from the order dated 06.07.2022 of the learned Special Sessions Judge and after hearing learned Assistant Public Prosecutor, after completion of 180 days in the present case neither charge-sheet was filed nor petition seeking extension of time was filed. In the said circumstances, right accrues to the accused under Section 167(2) of Cr.P.C.. The said right is indefeasible right as

described by the Hon'ble Supreme Court in ***Sanjay Dutt vs. State through C.B.I., Bombay (I)***¹. The said right of bail cannot be denied on the ground of either quantity or pendency of investigation or an assumption that the accused might jump bail.

6. In the said circumstances, the order dated 06.07.2022 of the learned Special Sessions Judge for NDPS Cases-cum-Principal Sessions Judge, Jayashankar-Bhupalpally District, passed in CrI.M.P.No.23 of 2022 is hereby set aside and the petitioners/accused Nos.3 to 5 are directed to be released on bail on the following conditions:

- i) The petitioners/Accused Nos.3 to 5 are directed to be released on bail on their executing personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties for like sum each, to the satisfaction of the learned Special Sessions Judge for NDPS Cases-cum-Principal Sessions Judge, Jayashankar-Bhupalpally District.
- ii) The petitioners/Accused Nos.3 to 5 shall appear before the concerned Police on every Monday between 10.00 A.M. and 05.00 P.M, for a period of three months or until filing of charge sheet, whichever is earlier.
- iii) The petitioners/accused Nos.3 to 5 shall comply with the conditions as laid down under Section 437 (3) of Cr.P.C.

¹ (1994) 5 Supreme Court Cases 402

7. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications, if any pending in this criminal petition, shall stand closed.

K.SURENDER, J

Date :18.07.2022

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Dt.18.07.2022

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