

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.8312 of 2021

ORDER:

This petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/A.6 in connection with Crime No.169 of 2021 of Gudur Police Station, wherein the petitioner is alleged to have committed the offence punishable under Section 8(c) read with 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The case of the prosecution is that on 30.09.2021 at about 11.30 a.m. at Kobal Thanda, A.1 to A.5 were found in possession of 101.900 kgs. of dry ganja in 44 packets, while they were carrying in three bags in order to sell the same for higher price. During the course of recording their confessional statements, A.1 to A.5 confessed that the petitioner/A.6 ordered 44 dry ganja bundles to A.1 to A.4 with the help of A.5 to sell the same at higher price at Hyderabad. Accordingly A.1 to A.5 transporting the ganja bundles to A.6, they caught hold. The police seized 101.900 kgs. of ganja from them and arrested the accused under the cover of mediators report. Basing on the said report, the present crime was registered.

3. Heard Mr.V.Yadu Krishna Sainath, learned counsel for petitioner, and learned Additional Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that the petitioner is arrayed as A.6 and it is alleged that contraband of 101.800 grams is seized in this crime. He submits that nothing has been seized from the possession of the petitioner. He further submits that basing on the confessional statement of co-accused, the petitioner has been implicated in this case, without there being any other material, which is contrary to law. It is submitted that in view of the law laid down by the Apex Court in **Tofan Sing v. State of Tamil Nadu**¹, the confessional statement of co-accused cannot be taken into consideration. He submits that the petitioner is arrested and remanded to judicial custody on 20.10.2021 and he has been languishing in jail from the last 123 days. Hence, the petitioner's case may be considered for grant of bail.

5. On the other hand, learned Additional Public Prosecutor submits that the contraband that is seized in this crime is 101.800 grams and in view of the bar under Section 37 of the NDPS Act, the petitioner is not entitled for bail. Further, it is submitted that as per the charge sheet, there are specific overt acts against the petitioner, which prima facie establishes that the petitioner is actively involved in this crime and at his behest, the other accused procured the contraband. Hence, the petitioner is not entitled for bail.

¹ (2021) SCC online SC 882

6. Heard learned counsel for the petitioner, learned Assistant Public Prosecutor and perused the entire material on record.

7. In the remand report as well as in the charge sheet, the only allegation is that at the instance of the petitioner herein as he is ready to purchase the contraband, the other accused procured the ganja. Except the said allegation in the charge sheet, nothing has been stated against the petitioner. Further, taking into consideration the judgment of the Apex Court in Tofan Singh (supra), this Court deems it appropriate to grant bail to the petitioner/A.6 on certain conditions.

8. Accordingly, this Criminal Petition is allowed and the petitioner/A.6 shall be enlarged on bail on his executing a personal bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two sureties for a like sum each to the satisfaction of the Sessions Judge for NDPS Cases-cum-I Additional Sessions Judge, Warangal. On such release, the petitioner shall appear before the Station House Officer, Gudur Police Station, on every Sunday between 10.00 a.m. and 1.00 p.m. till the trial is completed.

LALITHA KANNEGANTI, J

Date: 21.02.2022
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