

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 9638 of 2021

O R D E R:

This Criminal Petition under Sections 437 and 439Cr.P.C. is filed by the petitioners – Accused Nos.4 and 5 in Crime No.232 of 2021 on the file of Bhadrachalam Town Police Station, Bhadrachalam District, registered for the offence punishable under Section 8(c) read with Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985, seeking bail.

2. Prosecution alleges that on 06.06.2021 at 1600 hours, while the Sub-Inspector of Police along with his staff was conducting vehicle checking at boarder check post, Kunavaram road, Bhadrachalam, they stopped a car under suspicious circumstances, found A1 and A2 therein and on search, they seized 200 kgs of dry ganja from their possession under a cover of panchanama.

3. Learned counsel for the petitioners Mr. M.A.K.Mukheed submits that the petitioners are alleged to have committed the offence under Section 8(c) read with 20(b) of NDPS Act, 1985 and the contraband of 200 kgs is

seized in this crime. He submits that the petitioners are arrayed as A4 and A5 and the entire investigation is completed and charge sheet is filed and as per the charge sheet, the contraband is seized from the possession of A1 and A2 and it is their confession that on the instructions of A4 and A5, they went to Odissa for purchasing the contraband. Except the confession of A1 and A2, there is no other material to connect the petitioners to the alleged crime. Learned counsel submits that basing on the confession of the co-accused, petitioners cannot be arrayed as accused and on this basis, there cannot be a conviction. Learned counsel has relied on the judgment of the Apex Court in **Tofan Sing v. State of Tamil Nadu**¹, wherein it was held that the arrests made by the petitioner-NCB, on the basis of the confessions/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form basis for overturning the impugned orders releasing them on bail. Learned counsel also relied upon the judgment of the Apex Court in **State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta and another in Crl.A.No.242 of 2022**, wherein it was observed that no substantial material was available with the prosecution at the time of arrest to connect the accused with the allegations leveled against them of indulging in drug trafficking. Learned counsel further submits that

¹ (2021) SCC online SC 882

the petitioners are languishing in jail from the last 117 days and hence, their case may be considered for grant of bail.

4. On the other hand, learned Assistant Public Prosecutor submits that the petitioners are habitual offenders and earlier they have committed the offences under NDPS Act, and this Court, while granting bail earlier, directed them to appear before the police and not to indulge in similar type of offences, but as they failed to comply with the said conditions, the police have filed an application seeking cancellation of bail and their bail was cancelled. He submits that the petitioners being habitual offenders are not entitled for bail. However, he submits that the confession of the other accused would reveal that at the behest of the petitioners, they went to Odissa State to procure the contraband. He also submits that a huge contraband of 200 kgs is seized in the present crime, as such, the petitioners are not entitled for bail.

5. Having heard the learned counsel on either side, perused the entire material on record. In the charge sheet, except stating that as per the confession of A1 and A2 that they went to Odissa on the instructions of A4 and A5, the prosecution could not state any other reasonable circumstances to connect the accused with the alleged crime. In the light of the law laid down by the Honourable Apex Court in **Tofan Singh's** case (supra), *prima facie* the entire case of the

prosecution rests on the confession statement of the accused and also in the light of the judgment of the Apex Court in **State by (NCB) Bengaluru's** case (supra), this Court is of the view that the petitioners/A4 and A5 could satisfy the twin conditions under Section 37 of the NDPS Act and this Court deems it appropriate to enlarge them on bail.

6. The petitioners - Accused Nos.4 and 5 shall be enlarged on bail in connection with Crime No.232 of 2021 on the file of Bhadrachalam Town Police Station, Bhadradri-Kothagudem District, on their executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) each with two sureties for a like sum each to the satisfaction of the Judicial Magistrate of First Class at Bhadrachalam. Petitioners/A4 and A5 shall appear before the police concerned till completion of trial on every Sunday between 10.00 am and 1.00 pm.

LALITHA KANNEGANTI, J

9th March, 2022.

sj