

THE HONOURABLE SRI JUSTICE M. LAXMAN

CRIMINAL PETITION Nos.4696 and 5021 OF 2023

ORDER:

1. Since these petitions are arising out of same crime, they are heard together and being disposed of by this common order.

2. These petitions are filed seeking to grant regular bail under Sections 437 and 439 of Criminal Procedure Code, 1973 (Cr.P.C). The petitioners are accused Nos.1 and 4 in NDPS SC No.219 of 2022 on the file of the Metropolitan Sessions Judge, Ranga Reddy District at LB Nagar in connection with Crime No.430 of 2022 of Meerpet Police Station, Rachakonda. The offence alleged against the petitioners is under Section 8 (c) read with Section 20 (b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The sum and substance of case of the prosecution is that petitioner/accused No.1 is a habitual offender dealing with ganja. While he was in jail, he got acquaintance with accused Nos.2 and 3 and out of such acquaintance, he wanted to do business with accused Nos.4 and 5, who are relatives. They

contacted accused Nos.2 and 3 and hired vehicle i.e., Maruthi Suzuki S-Cross car and engaged accused Nos.6 and 7 as Drivers. Accused Nos.6 and 7 purchased ganja from accused Nos.2 and 3 and initially they brought to Hyderabad from Bhadrachalam with an intention to transport the ganja to Bangalore. While they were transporting from Hyderabad to Bangalore, when they reached near Jillelaguda X Road, a search was conducted and the search officers found 190 Kgs of ganja. At that time, accused Nos.1, 4 and 5 along with accused Nos.6 and 7 were found in the car. The ganja was seized under the cover of panchanama. After investigation, police filed charge sheet.

4. Learned counsel for petitioner/ accused No.4 contended that arrest of accused under the circumstances is very doubtful and he was in fact not in the car, he was shown to be in the car. It is further contended that he stands on par with accused No.5, who was already enlarged on bail. Therefore, the same benefit is entitled to petitioner/accused No.4.

5. Learned counsel for petitioner/accused No.1 contended that the entire seizure procedure was not in compliance with the standing orders. Further, the samples were drawn in

violation of standing orders. Therefore, the entire process is vitiated and hence, he has good grounds to believe that he has not committed any offence. Therefore, he is entitled for bail.

6. Learned Additional Public Prosecutor opposed bail applications of petitioners/accused Nos.1 and 4 contending that accused No.1 is involved in multiple offences and he is prime accused, who has involved with other relatives i.e., accused Nos.4 and 5 to commit the offence. It is further contended that the seizure was done, thereafter, in compliance of Section 52-A of NDPS Act, samples were drawn and such procedure is not violated. It is further contended that while accused No.5 enlarged on bail, this Court has not considered the ingredients of Section 37 of NDPS Act. Therefore, such grant of bail is not consideration for the application of accused No.1.

7. As seen from the charge sheet, it is accused No.1 who is prime accused in this case. He was also involved in two more offences. According to learned counsel for petitioner/accused No.1 he was acquitted in one of the case and one more case is pending. Learned counsel for petitioner/accused No.1 contended that there was no compliance of standing orders,

which cannot be considered at this stage. *Prima-facie* this Court feels that the seizure was made in the presence of reliable witnesses, further procedure for drawing the samples was in compliance of Section 52-A of NDPS Act. When there is conflict between the standing orders and statutory provisions that statutory provisions must prevail over the standing orders and standing orders are meant to carry the objects of the Act. Therefore, such contention is not in merit. Accused No.1 was also found transporting ganja along with accused Nos.4 and 5 and he is prime accused for the alleged offence. Accused Nos.4 and 5 who were relatives of accused No.1 does not have any criminal antecedents. Though, order granting of bail for accused No.5 did not reflect the consideration of the requirement of Section 37 of the NDPS Act.

8. Therefore, in the background of above facts, the benefit of bail cannot be extended to the petitioner/accused No.1 in Crl.P No.5021 of 2023. Accordingly, bail application of petitioner/accused No.1 is dismissed.

9. The contention of learned counsel for petitioner/accused No.4 is that accused No.4 was not in the car such contention

cannot be tested at this stage. Further, the fact is that accused No.5 was enlarged on bail. The similar allegation, the petitioner cannot be deprived. Considering the benefit extended to accused No.5 and lack of criminal antecedents and in the light of plea of accused No.4, this Court have some reasons to believe that he is not guilty of the offence. Therefore, request of petitioner/ accused No.4 can be considered.

10. Accordingly, the Criminal Petition of petitioner/ accused No.4 is allowed in Crl.P No.4696 of 2023 and the petitioner/accused No.4 shall be released on bail on the following terms and conditions:

- (i) The petitioner/accused No.4 shall be released on bail on his executing a personal bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties for a like sum each to the satisfaction of the Metropolitan Sessions Judge, Ranga Reddy District at LB Nagar.
- (ii) The petitioner/accused No.4 shall not directly or indirectly influence or make any witnesses or complainant.

- (iii) The petitioner/accused No.4 shall not indulge in similar type of offences till conclusion of trial and if it is found that the petitioner is involved in similar type of offences in future, the bail granted to him shall automatically stands cancelled and he shall be taken into custody forthwith.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M. LAXMAN

19.06.2023
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Date:19.06.2023

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