

THE HON'BLE SRI JUSTICE M. LAXMAN

CRIMINAL PETITION No.4769 of 2023

ORDER:-

This petition is filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking to enlarge the petitioner/accused No.5 on bail in S.C.N.D.P.S.No.09 of 2023 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, Ranga Reddy District for the offences punishable under Sections Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act").

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

3. The case of the prosecution is that on the instructions of accused No.1, accused Nos.3 to 6 went to Vijayawada from Maharashtra. There, accused Nos.3 to 6 engaged a Mahindra Xylo Car and went to Visakhapatnam. Later, they engaged a Lorry wherein accused Nos.3 to 6 transported 250 kgs of Ganja. When the authorities searched the truck at the Toll Gate of ORR Exit-17 at Rajendranagar, it was found that the truck was escorted by other accused in a Car. Accused No.4 was the driver and accused No.5 was travelling in the truck as a cleaner.

5. Learned counsel for the petitioner submits that the petitioner was travelling as a cleaner. Though, the petitioner had knowledge about the possession of the contraband, he was in a helpless condition. The rigors which are applicable for accused No.4 and the other accused cannot be extended here, as there is every chance for the petitioner to get an acquittal on account of the capacity in which he was travelling in the truck.

6. Learned Public Prosecutor opposed for grant of bail contending that a large commercial quantity of contraband was seized in the truck and he cannot be released on bail.

7. As seen from the prosecution case, the truck was engaged at Visakhapatnam and the own case of the prosecution is that accused No.4 was the driver and accused No.5 was the cleaner. Accused No.4 was the person who allowed the contraband being carried in the truck. Accused No.5, being a cleaner, cannot override the decision of the driver and he cannot resist the attempts of accused No.4. Accused No.5 appears to be in a helpless condition. The claim of the prosecution is that, accused Nos.3 to 6 came from Maharashtra is contrary to their subsequent version. If accused Nos.4 and 5 came by train, how could they secure the truck belonging to Maharashtra State. The owner of the

truck was not examined to know as to whether they actually travelled from Maharashtra to Visakhapatnam.

8. The evidence shows that the vehicle was engaged at Visakhapatnam. Accused No.4 was the driver and accused No.5 was the cleaner. This Court believes that there are reasons considering the position of accused No.5 in the vehicle that the petitioner is not guilty of the alleged offence. Further, there is no evidence to show that the petitioner will again indulge in serious offences since his past record is clean and fair. In view of the same, the request of the petitioner can be considered.

9. In the result, the Criminal Petition is allowed and the petitioner/accused No.5 shall be released on bail on the following terms and conditions:-

(i) The petitioner 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 learned Metropolitan Sessions Judge, Cyberabad, at L.B. Nagar, Ranga Reddy District.

(ii) The petitioner shall not directly or indirectly influence or make any witnesses or complainant.

(iii) He 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.

(iv) The petitioner shall appear on every date before the trial Court during the proceedings with proper proof without any excuse.

(v) He shall not act in any manner which will be prejudicial to fair and expeditious investigation.

Consequently, miscellaneous applications pending, if any, shall stand closed.

Date:08.06.2023
ESP

M. LAXMAN, J

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