

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.8212 OF 2023

Between:

Gunti Sai Varun

... Petitioner/Accused No.1

And

The State of Telangana,

Rep. by its Public Prosecutor

High Court at Hyderabad, through SHO P.S.

Chityal, Nalgonda District.

... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 08.09.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 8212 of 2023

% Dated 08.09.2023

Gunti Sai Varun ... Petitioner/Accused No.1

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court at Hyderabad, through SHO, P.S.
Chityal, Nalgonda District. ... Respondent/Complainant

! Counsel for the Petitioner: Sri Mirza Mahmood Ali Baig

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2016) 3 Supreme Court Cases 379

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NO.8212 OF 2023****ORDER:**

1. This Criminal 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/Accused No.1 in FIR No.117 of 2023 on the file of Chityal Police Station, Nalgonda District, registered for the offence under Sections, 337 IPC, Section 8 (c) r/w. 20 (b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘the NPDS Act’).

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent-State and perused the record.

3. The petitioner was arrested for being in possession of 104 kgs of ganja. According to the police, on 06.07.2023 this petitioner and three others were traveling in a car with the contraband. At about 11.00 a.m, when the car reached outskirts of Veliminedu Village of Chityal, petitioner lost control due to giddiness and the car overturned on to the left side of the road. The petitioner lost consciousness. By the time petitioner regained consciousness, A2 to A4 absconded. Police went to the scene and shifted the petitioner

to the hospital. In the said car, on verification, three bags of ganja was found totaling 104 kgs. Samples were drawn from three bags. Thereafter, petitioner was arrested.

4. Learned counsel appearing for the petitioner would submit that the petitioner was only a driver and has nothing to do with the alleged contraband and at the instance of other accused, he was driving the car. He does not have knowledge about any contraband in the car. Only for the reason of the petitioner being found near the car, he was arrested and sent to judicial remand.

5. On the other hand, learned Additional Public Prosecutor would submit that this petitioner was found in possession of 104 kgs of ganja, which is commercial quantity. According to his confession, he had knowledge about the ganja being transported. Petitioner in collusion with three others was transporting ganja.

6. On being questioned by this Court regarding samples being drawn, Public Prosecutor produced petition which was filed by the Circle Inspector of Police, Narketpally Circle. In the said petition, it is prayed to certify the inventory of seized ganja leaves and also the samples drawn from the seized property. The said petition was filed on 12.07.2023 and according to the learned Public Prosecutor, the Court had given the date as 09.09.2023.

7. The Hon'ble Supreme Court in the case of **Union of India v.**

Mohanlal and another² held as follows:

“15. It is manifest from Section 52-A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

8. The Hon'ble Supreme Court held that samples have to be drawn after producing contraband before the concerned Magistrate at the earliest. In the present case, the police found the petitioner on 06.07.2023 and was arrested on the same day. The remand case diary is dated 07.07.2023. However, in the remand CD, there are no details regarding the production of contraband before the

² (2016) 3 Supreme Court Cases 379

Magistrate for the purpose of certification and also drawing samples.

9. The directions of the Hon'ble Supreme Court in **Mohanlal's case** (supra) have to be scrupulously followed. There cannot be delay in producing the contraband before the Magistrate and also for drawing samples. Not following the procedure would only benefit the accused. In the circumstances, this Court deems it appropriate to give directions to the police officers and also to the concerned Magistrates as follows:

i) Immediately after seizure of the contraband, the same shall be produced before the concerned Magistrate when the accused is remanded. The remand application shall also reflect the production of contraband and also seeking permission to draw samples in his presence.

ii) On production of accused, the learned Magistrate shall record the production of the contraband before the Court and certify the inventories and be a witness to the drawing of samples in his presence either on the same day or within a reasonable time which shall not be more than two days from the date of remand.

iii) Any application made for certifying the inventory and also request for drawing samples shall be filed along with the remand application.

10. The said procedure shall be scrupulously followed. The said directions are in accordance with the observations of the Hon'ble Supreme Court in **Mohanlal's case** (supra).

11. In the present case, there is no explanation as to why there is delay of five days in producing the contraband before the concerned Magistrate.

12. In the circumstances, this Court deems it appropriate to grant relief of regular bail to the petitioner, subject to following conditions:

- i) The petitioner/Accused No.1 shall execute personal bond for a sum of Rs.50,000/- (Rupees fifty thousands only) with two sureties for a like sum each to the satisfaction of Judicial First Class Magistrate at Nalgonda.
- ii) The petitioner/Accused No.1 after release shall appear before the concerned Station House Officer at 10:00 a.m. on every Monday and Wednesday for a period of eight weeks or until the charge sheet is filed, whichever is earlier.
- iii) The petitioner/Accused No.1 shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

13. Accordingly, this Criminal Petition is allowed. Miscellaneous applications, pending if any, shall stand closed.

Date: 08.09.2023

Note: LR copy to be marked.

B/o.kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO. 8212 OF 2023

Dt.08.09.2023

kvs