

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.11005 of 2022

ORDER:

This Criminal Petition is filed under Section 439 Cr.P.C. seeking the Court to enlarge the petitioners, who are arrayed as accused Nos.1 and 2 in NDPS.SC.No.287 of 2022 which is pending on the file of the Court of Metropolitan Sessions Judge, Medchal-Malkajgiri District at Malkajgiri, on bail.

2. Heard Sri Ashutosh Joshi, learned counsel, who argued on behalf of Sri Mohd. Ali Aamir, learned counsel on record for the petitioners, as well as the learned Additional Public Prosecutor who is representing the respondent-State.

3. Learned counsel for the petitioners, basing on the order that is rendered by this Court in Criminal Petition No.7749 of 2022 (Sri Justice K.Surender), wherein and whereby the trial Court was directed to complete the trial within three months, failing which, the petitioners would be at liberty to move for bail, contended that the said order was rendered on 05.9.2022 and till now, trial has not been completed and therefore, the petitioners may be enlarged on bail.

4. Per contra, the submission of the learned Additional Public Prosecutor is that it is petitioner No.1 who had taken the aid of the other accused and was found transporting the contraband. Learned Additional Public Prosecutor also submits that both the petitioners hail from the State of Uttar Pradesh and the trial proceedings are in progress and further, P.W-1 supported the case of the prosecution and therefore, the petitioners are not entitled for bail.

5. In reply to the said submission, learned counsel for the petitioners contends that in case, the petitioners are not found guilty of the offences charged and they are acquitted, they would be held to be in judicial custody for no fault on their part and the said fact has to be taken into consideration.

6. This Court is of the view that the rigor of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, cannot be diluted basing on the plea that in case, the accused are not found guilty of the offences charged, their detention would be unwarranted.

7. Section 37 the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as under:-

“37. Offences to be cognizable and non-bailable. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.”

8. The legislature by its wisdom, on considering all the relevant aspects, more particularly the ill-effects of the illegal manufacturing, transportation and purchase of prohibited items like ganja, has made a stringent provision so as to

curtail the said unlawful activities so that the society would be protected.

9. Having considered the said object of the legislature incorporating Section 37 as one among the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, this Court is of the view that basing on the submission made by the learned counsel for the petitioners, the petitioners cannot be enlarged on bail.

10. Resultantly, this Criminal Petition is dismissed. However, having considered the fact that the petitioners are in judicial custody since nine months, the trial Court is once again directed to take up trial day-to-day and to conclude the proceedings preferably within two months from the date of receipt of a copy of this order.

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

Dr. JUSTICE CHILLAKUR SUMALATHA

13.02.2023
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