

HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION No.6868 of 2024

ORDER :

Petitioner/accused No.1 has filed this petition under Sections 437 and 439 of Cr.P.C. seeking bail in Cr.No.1265 of 2023 of P.S. Hayathnagar, registered for the offences under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act.

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

3. Case of the prosecution is that on the instructions of this petitioner, accused No.2 in this crime was found transporting 87.600 kgs. of ganja from Visakhapatnam to Pune in his car.

4. Learned counsel for petitioner has submitted that petitioner herein was arrested on 22.04.2024, merely basing on the confession of accused No.2 in the case. He further submitted that when the petitioner was in jail in another crime and only two days were left for his mandatory bail, the Police have implicated the petitioner in this case without any basis. He further contends that the Police have committed procedural violation while sending the samples of contraband for analysis, which is against the Standing Order 1/89. It

is further contended that the entire investigation in the case is completed and charge sheet is also filed, and hence, he prayed for grant of bail.

5. The learned Additional Public Prosecutor, on the other hand, opposed the application stating that sampling was done as per the procedure. It is further submitted that the petitioner is a drug peddler, is involved in other crimes and if he is released on bail, he may commit similar type of offences, hence, prayed to dismiss the application.

6. As seen from the remand report, 87.600 kgs. of ganja was seized from the possession of accused No.2. When it is apparent from the record that sampling was done contrary to the standing instructions 1 of 1989, dated 13.06.1989, which is mandatory, it cannot be said that the Police had followed the procedure prescribed under the NDPS Act. It is to be noted that homogeneous mixture was not made after noticing that the contraband in all the packets was dry ganja, as required in 2.3 of Standing Order 1/89, for drawing the duplicate sample. For the sake of convenience, Standing Order 1/89, dated 13.06.1989 is extracted hereunder:

“WHEREAS the Central Government.....

Drawal of Samples:

2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama.

Quantity to be drawn for the sampling:

2.3. The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.”

7. When it is not even known as to from which packet the sample was taken out of 52 packets seized, there is violation of 2.2 of Standing Order No.1/89 also. Standing Order 2.3 provides that

quantity of 24 grams in each packet has to be drawn for the chemical test. Neither the panchanama nor the complaint nor remand report makes a mention about the same.

8. In view of the above, since the petitioner is arrested merely basing on the confession of accused No.2 and as no contraband was seized from accused No.1, and further, as the investigation is completed and charge is already filed, this Court is of the considered view that it is a fit case for grant of bail subject to following conditions:

- (i) The petitioner shall be released on bail on his executing a personal bond for Rs.20,000/- with two sureties (one must be a local surety and the other from his native place), for the like sum each to the satisfaction of the XIV Additional Metropolitan Magistrate Court, Ranga Reddy District at Hayathnagar, Ranga Reddy District.**
- (ii) If the petitioner again commits similar offence, the prosecution is at liberty to file a petition for cancellation of bail.**
- (iii) The petitioner shall abide by the conditions stipulated in Section 437(3) Cr.P.C.**

Petition is accordingly allowed.

JUVVADI SRIDEVI, J

Date: 15.07.2024
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