IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE TWENTIETH DAY OF MARCH

TWO THOUSAND AND TWENTY FIVE

:PRESENT:
HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 2744 OF 2025

Between:

Thambeli Amoju, S/o. Sathibabu, aged about 22 Years, R/o. Kattubanda Village,Annavaram Post, Chinthapalli Mandal, Alluri Seetha Rama Raju District.

Petitioner/Accused-1

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Judicature of Andhra Pradesh At Amaravati

Respondent/Complainant

Petition under Sections 480 & 482 of BNSS, is filed praying that in the circumstances stated in the memorandum of grounds filed in support of the CriminalPetition, the High Court may be pleased to release the petitioner/A1 on Bail in connection with crime No. 327of 2024 in of Nakkapalli police Station, Anakapalli District, U/s 20(b)(ii)(C),25 r/w 8 (c) of NDPS Act, 1985, Dated 01-12-2024.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri. KAKUMANU JOJI AMRUTHA RAJU, Advocate for the Petitioner and of PUBLIC PROSECUTOR for the Respondent

The Court made the following:

APHC010127752025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3369]**
(Special Original Jurisdiction)

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THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 2744/2025

Between:

Thambeli Amoju ...**PETITIONER/ACCUSED**

AND

The State Of Andhra Pradesh ...**RESPONDENT/COMPLAINANT**

Counsel for the Petitioner/accused:

1. KAKUMANU JOJI AMRUTHA RAJU

Counsel for the Respondent/complainant:

1. PUBLIC PROSECUTOR

The Court made the following: ORDER:-

This Criminal Petition, under Sections 480 and 483 of the BNSS, has been filed by the petitioner/A1, seeking regular bail, in Crime No.327 of 2024 of Nakkapalli Police Station, Anakapalli District.

2. A case has been registered against the petitioner herein and others for the offences punishable under Sections

20(b)(ii)(B), 25 r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

3. The brief facts of the case are that on 01.12.2024 at about 2.00 hours, upon receiving credible information about the illegal possession and transportation of ganja, the ASI of Police, along with his staff and mediators, rushed to NH-16- road, Vedullapalem Junction, Nakkapalli Mandal and found A1 standing on the road and holding two travel bags in his hands. The police officials seized the 20 kgs of ganja from the possession of A1. The contraband, along with other materials, was seized under the cover of mediator's report.

4. Learned counsel for the petitioner/A1 contended that the petitioner was arrested on 01.12.2024 and since then he has been in judicial custody. The petitioner is aged about 22 years and prays to enlarge the petitioner on bail.

5. On the other hand, learned Assistant Public Prosecutor also confirms non-filing of charge sheet by the police and opposed for grant of bail to the petitioner.

6. Heard both sides.

7. Now, the point for consideration is:

Whether the petitioner/A1 can be released on grant of bail?

POINT:

8. Perused the entire material on record.

9. Learned counsel for the petitioner submitted that even according to mediators report, the investigating officer has not followed the procedure contemplated under Section 52-A(3) of NDPS Act.

10. The mediators report shows that the contraband weighing about 20kgs was said to be seized from the possession of petitioner. The report further shows that in the presence of mediators they collected the sample. It shows that they did not approach the Magistrate while taking samples from the contraband. Learned counsel for the petitioner relied on a decision reported in between ***Simaranjit Singh vs. State of Punjab***[1] wherein it is held that:

> *16. Sub-section (3) of Sec.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 supervision of*

[1] 2023 LawSuit(SC) 859

> *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 subsections (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.*
> *9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of* ***Union of India v. Mohanlal & Anr***[2]*. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.*
> *10. Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar as the present appellant is concerned and quash his conviction and sentence.*
> *11. The appeal is accordingly allowed.*

11. By following the above principle laid down, this Court found that the said principle is clearly applicable to the facts of the case. Moreover, the petitioner is in judicial custody from 01.12.2024. Most of the witnesses are official witnesses and the release of the accused would not cause hampering of the investigation and tampering of evidence. The petitioner had permanent abode at Kattubanda Village, Chinthapalli Mandal,

[2] (2016) 3 SCC 379

Alluri Seetha Rama Raju District, as such, there is no possibility of his fleeing away from the jurisdiction of the trial Court. In view of the aforesaid facts and circumstances of the case, this Court is inclined to grant bail to the petitioner/A1.

12. In the result, the criminal petition is allowed with the following conditions:

i. The petitioner herein shall be released on bail on his executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) with two (02) sureties for a like sum each to the satisfaction of the learned I-Additional District & Sessions Judge-cum-Special Judge for trial of cases under NDPS Act, Visakhapatnam;

ii) After release, the petitioner shall appear before the Station House Officer concerned, once in a fortnight for a period of three (03) months; and

iii) That the petitioner is directed not to hamper the investigation and tamper with the prosecution witnesses.

8. Accordingly, the Criminal Petition is **allowed.**

SD/-B.CHITTI JOSEPH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The I Additional District & Sessions Judge - cum - Special Judge for Trial of Offences under NDPS Act : Visakhapatnam, Visakhapatnam District.
2. The Superintendent, Central Prison, Visakhapatnam, Visakhapatnam District.

3. The Station House Officer, Nakkapalli Police Station, Anakapalli District. (Formally known as Visakhapatnam District.)

4. One CC to Sri. KAKUMANU JOJI AMRUTHA RAJU, Advocate [OPUC]

5. Two CCs to the PUBLIC PROSECUTOR, High Court of Andhra Pradesh [OUT]

6. **One spare copy**

JSS

HIGH COURT

TMR, J

DATED:20/03/2025

BAIL ORDER

CRLP.No.2744 of 2025

ALLOWED

