

THE HON'BLE MS JUSTICE B.S.BHANUMATHI

Criminal Petition No.1666 of 2023

ORDER:

This Criminal Petition is filed by petitioners/A1 and A2 under Sections 437 and 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), seeking regular bail in Crime No.136 of 2022 of Thallur Police Station, Prakasam District, registered on 26.12.2022 for the offence punishable under Section 20(b) r/w 8(c) of NDPS Act, 1985.

2. Heard Sri. M. Chalapathi, learned counsel for the petitioner/A1 and A2 and Sri. P.M. Mithileswara Reddy, learned Assistant Public Prosecutor representing the respondent/State.

3. The case of the prosecution is that on 26.12.2022, 20 kgs of ganja was found in the house of A1 which is hired by A2 and the contraband was seized in the absence of the accused but in the presence of the mediators.

4. Learned counsel for the petitioners submitted that a false case was foisted against the petitioners and that 70 days

elapsed since the date of remand of the petitioners to judicial custody.

5. Learned Assistant Public Prosecutor represented that investigation is still pending and the charge sheet is not filed. However, since the contraband is 20 kgs which is non-commercial quantity as per the definition, he submitted to pass appropriate order.

6. As per Section 2 (vii)(a) of NDPS Act, commercial quantity is defined in respect of Narcotic Drugs and Psychotropic Substances meaning any quantity greater than the quantity specified by the Central Government by notification in the official gazette. The list of notified Narcotic Drugs and Psychotropic Substances, at S.No.55 shows that 1000 grams as small quantity and 20 kgs is commercial quantity. Therefore, the contraband over and above 20 kgs would be considered as commercial quantity.

7. As such, the quantity of ganja involved in this case is at the margin of non-commercial quantity. However, since it is in law recorded as non-commercial quantity as per Section 167(2) Cr.P.C. r/w 36 A of NDPS Act, after lapse of 60 days, the

petitioners are entitled to default bail because the charge sheet has not been filed so far, however, subject to certain conditions.

8. Accordingly, the Criminal Petition is allowed. The petitioners/A1 and A2 (Naguluri Kotaiah S/o. Kotaiah and Uyyala Srinivasa Rao, S/o. Yedukondalu) shall be released on bail on their furnishing personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) each with two sureties for the like sum each, to the satisfaction of the learned Judicial First Class Magistrate, Darsi and subject to complying the following conditions:

(i) The petitioners/A1 and A2 are directed to appear before the Station House Officer, Thallur Police Station, Prakasam District on every Sunday between 10:00 AM and 05:00 P.M. starting from the day of their release until further orders or filing of charge sheet, whichever is earlier.

(ii) The petitioners/A1 and A2 shall not directly or indirectly contact or threaten the witnesses under any circumstances and any such attempt shall be construed as an attempt of influencing the witness.

(iii) The petitioners/A1 and A2 shall cooperate with the investigation.

(iv) The petitioners/A1 and A2 shall not leave the jurisdiction without prior permission of the Court concerned.

Pending miscellaneous applications, if any, shall stand closed.

Date:10-03-2023
GSP

B.S.BHANUMATHI, J

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