

THE HON'BLE MS JUSTICE B.S.BHANUMATHI

Criminal Petition No.581 of 2023

ORDER:

This Criminal Petition under Sections 437 and 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), is filed by petitioners/A2 & A3, in Crime No.73 of 2022 dated 09.10.2022 of Maredumilli Police Station, Alluri Seetharamaraju District, registered for the offence punishable under Sections 8(c) r/w 20(b)(ii) (C) of N.D.P.S Act.

2. Heard the learned counsel for the petitioners/A.2 & A.3 and Sri.P.M.Mithileswara Reddy, the learned Special Assistant Public Prosecutor representing the respondent/State.

3. The case of the prosecution is that on 09.10.2022, on receipt of credible information about the illicit possession/transportation of ganja, S.I. of Police visited G.M.Valasa Junction at Maredumilli outskirts, and caught red handed A-2 and A-3 while they were found in possession and transportation of 375 kgs of Ganja in 15 white colour plastic bags in a lorry bearing No.AP 16 TD 9959 under a load of rotten and decomposed Corn kernels and wet and liquidated salt sacks from Bhadrachalam to Prayagraj.

4. The learned counsel for the petitioners submitted that false case was foisted.

5. The learned Special Assistant Public Prosecutor opposed the bail and submitted that the petition under Section 36-A (4) of NDPS Act is filed before the Special Court and the details of its number are to be received, as per the instructions to him.

6. Perused the record. Since investigation is not completed even after 176 days after taking the petitioners in judicial custody, the petition is to be disposed on merits. Since there is well founded accusation against the petitioners for having been found in possession of 375 kgs of Ganja, they are not entitled to bail as the petition is opposed by Special Assistant Public Prosecutor and there are no grounds to believe that the petitioners are not guilty of offence.

7. In the case of **M.Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence**¹, after having considered the decisions of the Supreme Court in several cases, including the decision of the three-Judge Bench judgments in **Rakesh Kumar Paul Vs State of Assam**², wherein the majority opined that oral argument for default bail made by the counsel for the accused before the High Court would suffice in view of the written application, it is observed in the conclusion at paras 25.2 and 25.3, making a distinction between regular bail application and the petition seeking default bail as follows:

“25.2 The right to be released on default bail continues to remain enforceable if the Accused has applied for such bail,

¹ (2021)2 SCC 485

² (2017) 15 SCC 67

notwithstanding pendency of the bail application; or subsequent filing of the charge sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

25.3 However, where the Accused fails to apply for default bail when the right accrues to him, and subsequently a charge sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the Accused may still be released on bail under other provisions of the Code of Criminal Procedure.”

8. As such, the petitioners can avail the indefeasible right under Section 167 (2) Cr.P.C. after expiry of 180 days, if period is not extended under Section 36-A (4) of NDPS Act before expiry of the statutory period. Then the said application under Section 36-A (4) of NDPS Act, pending, can be heard along with the petition under Section 167(2) Cr.P.C. by the same Court.

9. In **Milliudhan Singh and others Vs The State of Andhra Pradesh**³, this Court in order dated 04.07.2022, after expiry of statutory period has given liberty to the petitioners to file appropriate petition before the jurisdictional Court. Therefore, the petition is to be disposed of on merits rather than on the ground of default bail. Therefore, since there is well founded accusation against the petitioners who are found in possession of

³ Criminal Petition No.3852 of 2022

the contraband of commercial quantity, it is not the case fit for grant of bail.

10. The petitioners were taken into judicial custody on 10.10.2022. Since the present application is filed under Sections 437 and 439 of Cr.P.C., and so far the petitioners have not filed a petition under Section 167(2) of Cr.P.C., giving liberty to the petitioners to file the same before the Special Court, the Criminal Petition can be disposed of.

11. Accordingly, this Criminal Petition is disposed of. No costs.

Pending miscellaneous applications, if any shall stand closed.

Dt.03-04-2023

B.S.BHANUMATHI, J

SAB