

THE HON'BLE SRI JUSTICE M.VENKATA RAMANA

CRIMINAL PETITION No.2834 of 2020

ORDER:

This petition is filed for grant of regular bail under Sections 437 and 439 Cr.P.C. by A1. The offences alleged against him are under Sections 8(c) and 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act (for short, 'the Act').

2. The case of the prosecution is that the petitioner was found in possession of 240 kgs. of ganja on 17.10.2019 and was travelling in a Tempo during that time. The police concerned arrested him in that context and when he was produced before the jurisdictional Magistrate, he was remanded to judicial custody. The petitioner is stated to have have been in judicial custody from 18.11.2019 onwards.

3. Sri A.Parthasaradhy, learned counsel for the petitioner strenuously contends that a false case is foisted against the petitioner and in view of law laid down by the Hon'ble Supreme Court despite the alleged huge quantity of ganja, Section 37 of the Act cannot be a bar for grant of bail. Learned counsel for the petitioner referred to the following rulings in support of his contention.

1. Matchumari China Venkatareddy v. State of Andhra Pradesh(1994 CriL.J 257)
2. Union of India v. Thamisharasi and others in Appeal(Crl.) 611-612 of 1995 dated 01.05.1995=1995(4)SCC 190
3. Uday Mohanlal Acharya v. State of Maharashtra in Appeal(Crl.) 394 of 2001 dated 29.03.2001=AIR 2001 SC 1910
4. Hitendra Vishnu Thakur v. State of Maharashtra (AIR 1994 SC 2623)
5. Roy@ Compan Roy v. State of Kerala (2019(4) Crimes(HC) 20

4. Learned Public Prosecutor opposed this petition mainly pointing out that this petitioner is responsible for sale and transport of ganja and the contention of learned counsel for the petitioner that other accused in same case were already released on bail cannot be treated a parallel to consider his request. Pointing out Section 37 of the Act, learned Public Prosecutor requests not to consider this application.

5. A huge quantity of 240 kgs of ganja as per the case of the prosecution was in possession of the petitioner, when he was apprehended. It is a commercial quantity and therefore, as rightly pointed out by learned Public Prosecutor, bar under Section 37 of the Act operates.

6. Though, learned counsel for the petitioner contends that the situation relating to Section 37 of the Act is explainable, for which purpose, he relied upon the rulings referred to above, in given facts and circumstances of the case, it is rather undesirable to consider his request. Contention of the learned counsel for the petitioner is also that Section 167(2) Cr.P.C. was also invoked by the petitioner, filing an appropriate application in Crl.M.P.No.342 of 2020 before the Court of learned Metropolitan Sessions Judge, Vijayawada and that it was renewed later. Both these applications were dismissed by the concerned Court. In those circumstances, a fervent request is made to consider the plea of the petitioner for bail.

7. If the petitioner is entitled for statutory bail, he can as well canvass before the concerned Court at appropriate stage.

Nonetheless having regard to the material available on record and particularly, considering the effective bar under Section 37 of the Act, it is rather difficult to accede to the contention of learned counsel for the petitioner.

8. Finding no justification to grant bail to the petitioner, this petition has to be dismissed.

9. In the result, the Criminal Petition is dismissed.

Pending miscellaneous petitions if any, shall stand closed.

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**M.VENKATA RAMANA, J**

Date: 31.07.2020

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