



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL PETITION No.871 OF 2021

Between:

1. Kosetti Arjuna Rao, S/o Latchanna
2. Gurturti Mohana Venkatesh @
Mohana Venkata Raju, S/o Appa Rao

... Petitioners/A.4 & A.5

and

The State of Andhra Pradesh rep by
its Inspector of Police, Anaparthi Circle,
through Public Prosecutor,
High Court Bldgs Amaravati.

... Respondent/Complainant

JUDGMENT PRONOUNCED ON: 22nd March, 2021.

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN :

- 1 Whether Reporters of Local newspapers
may be allowed to see the Judgment? : Yes/No
- 2 Whether the copies of judgment may be
marked to Law Reports/Journals? : Yes/No
- 3 Whether Their Lordship wish to see the
fair copy of the Judgment? : Yes/No

JUSTICE B. KRISHNA MOHAN

*** THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN**



+ CRIMINAL PETITION No.871 of 2021

% 22-03-2021

- # 1. Kosetti Arjuna Rao, S/o Latchanna
2. Gurturti Mohana Venkaesh @ Mohana Venkata Raju

... Petitioners/A.4 & A.5

vs.

- \$ 1. The State of Andhra Pradesh
Rep by its Inspector of Police
Anaparthi Circle, through
Public Prosecutor, High Court Buildings
Amaravati.

... Respondent/Complainant

!Counsel for the Petitioner : Sri Y. Ramatirtha

^Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note :

? Cases referred :

1. (2020) 12 SCC 122
2. 1999 (9) SCC 429
3. (1990) 1 SCC 95

**THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN****CRIMINAL PETITION No.871 of 2021****ORDER:-**

This Criminal Petition is filed under Sections 437 and 439 Cr.P.C. seeking regular bail to the petitioners in connection with Crime No.230 of 2020 on the file of Anaparthi Police Station, East Godavari District registered for the offence punishable under Section 8(c) read with 20(b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"), in which, the petitioners are shown as the A.4 and A.5.

2. It is the case of the prosecution that on 03.11.2020 on receipt of credible information about the illegal transportation of Ganja, the Sub Inspector of Police, Anaparthi police Station caught hold of the accused No.1 to 6 while they were found in possession of 88.07 kgs of Ganja in 46 plastic packets and the same was recovered under the cover of mediators report.

3. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent-State.

4. Learned counsel for the petitioners/A.4 & A.5 contends that the petitioners/A.4 & A.5 have been arrested on 04.11.2020 and ever since they have been languishing in the jail. They have also moved an application in Crl.M.P.No.1342 of 2020 before the I Additional District & Sessions Judge (Special Judge for NDPS Cases) Rajamahendravaram seeking grant of bail under Section 439 Cr.P.C and the same was dismissed on merits vide its order



dated 26.11.2020. Learned counsel further contends that the above said seized ganja was not recovered from the petitioners and they are falsely implicated in the above said crime and accordingly sought for grant of bail.

5. Per contra, learned Additional Public Prosecutor contends that the quantity involved in the above said crime is huge and it is a commercial quantity and as per Section 37 of the NDPS Act, the bail cannot be granted to the petitioners at this stage. He also relying on the judgment of the Hon'ble Supreme Court reported in ***State of Kerala and others vs Rajesh and others***¹, specifically referring to at paras 19 and 20, which reads as under:

“19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the Accused involved in offences under NDPS Act. In *Union of India v. Ram Samujh and Ors*², it has been elaborated as under:

7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the Accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in ***Durand Didier v. Chief Secy., Union Territory of Goa***³ as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal

¹ (2020) 12 SCC 122

² 1999(9) SCC 429

³ (1990) 1 SCC 95]



trafficking in such drugs and substances have led to drug addiction among a sizeable Section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person Accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the Accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the Respondent-Accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained Under Section 439 of the Code of Criminal Procedure, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said Section is in the negative form prescribing the enlargement of bail to any person Accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

6. Considering the facts and circumstances of this case and in the light of the decision of the Hon’ble Supreme Court of India



as referred above, this Court has not found any merit in this criminal petition and the same is liable to be dismissed.

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

B.KRISHNA MOHAN, J.

Date : 22-03-2021

Note : L.R. copy to be marked.

(b/o)Gvl



THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

CRIMINAL PETITION No.871 of 2021

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Gvl