

Thondepu Kamalakara Rao vs Public Prosecutor on 17 February, 2021

' ,
a

IN THE HIGH. COURT OF ANDHRA PRADESH AT AMARAVATI _ .-----.

WEDNESDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE --

: PRESENT:
THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO: 698 OF 2021
Between: "

Thondepu Kamalakara Rao, S/o. Krishna Rao, Vysya, aged 32 years, R/o.
Kavuluru Village, G.Konduru Mandalam, Krishna District.
...Petitioner/Accused No.1
AND

The Public Prosecutor, High Court of Andhra Pradesh at Amaravathi.
...Respondent/Complainant

Petition under Sections 437 & 439 of Cr.P.C, praying that in the circumstances stated in the memorandum of grounds filed in Criminal Petition, the High Court may be pleased to enlarge the petitioners/accused No.1 on bail in Crime No.43/2021 pending against the petitioners/accused no.1 on the file of the Kanchikacharla Police Station Krishna District for the alleged offences Under Section 328,269,270,273 RW 34 IPC

Section 5 and 22 COTP Act and Section 8 (c) R/w 20(B) ii) (C) of N.D.P.S.Act 1985.

The petition coming on for hearing, upon perusing the Petition and the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri Devadass Balantha, Advocate for the Petitioner and of Public Prosecutor for the Respondent, the Court made the following.

ORDER

", HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI Criminal Petition No.698:| of 2021
ORDER:

This Criminal Petition is filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking to grant regular bail to the petitioner/A-1 in connection with Crime No.43 of 2021 of the Kanchikacherla Police Station, Krishna District for the offences punishable under Sections 328, 269, 270, 273 r/w 34 of Indian Penal Code, 1860 (for short IPC), Section 5(1) and 22 of Cigarettes and

Other Tobacco Products Act, 2003 (For short COTP Act) and Section 8(c) r/w 20(b) (i) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. The case of prosecution is that on 21.01.2021 at about 5.30 hours on receipt of credible information about illegal possession of Gutkhas/Khainees, the Sub-Inspector of Police, Kanchikacherla Police Station, rushed to near cotton fields in Bypass road leading towards Chevitikallu village from Kanchikacherla and found two persons being stood beside a Bajaj Pulsar motorcycle bearing No.AP-16-FD-5849, 6 bundles and one handbag and on seeing the police, they tried to skulk away and the police apprehended them and on interrogation, they confessed that they purchased gutkhas at Beedar, Karnataka State and ganja material weight about 1.250 grams from an unknown person at Vijayawada Railway Station, for selling the same to required persons in Kanchikacherla and surroundings and the police seized the same under the cover of mediator's report and the police arrested the petitioner and remanded to judicial custody. Basing on the same, the present crime is registered.

3. Heard Sri Balantha Devadass, learned counsel for the petitioner and the learned Public Prosecutor for the respondent-

State.

4. Learned counsel for the petitioner/A-1 submits that transportation of tobacco products is not an offence and the police cannot register the offences under IPC except under Food Safety and Standards Act, 2006. He also submits that in Crl.P.Nos.3718 of 2018 and 5103 of 2019 and batch, this Court has already laid down the ratio and basing on the same, several orders were passed by this Court. He also submits that even assuming that the petitioner has committed the offence under NDPS Act, the quantity that is seized by the police is only 1.250 gms which is not a commercial quantity, as such, there is no bar under Section 37 of the NDPS Act to grant bail to the petitioner. He submits that the bail petition which was moved before the Court below was dismissed in Crl.M.P.No.14 of 2021 even without considering the scope of Section 37 of the NDPS Act.

5S. The learned Public Prosecutor submits that transportation of tobacco products is banned in the State of Andhra Pradesh.

6. In view of the fact that the contraband that is seized from the petitioner is only 1.250 grams which is not a commercial BO NS DONon quantity, as there is no bar under Section 37 of the NDPS Act, this Court deems it appropriate to grant bail to the petitioner.

7 Accordingly, this Criminal Petition is allowed. The petitioner/A-1 shall be enlarged on bail on his executing personal bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties for a like sum each to the satisfaction of the Court of the learned Principal Junior Civil Judge-cum-Additional Judicial First Class Magistrate, Nandigama.

Sd/- V.DIWAKAR ASSISTANT REGISTRAR IITRUE COPYI// feel c | SEUTION OFFICER The Addl. Judicial First-Class Magistrate at Nandigama, Krishna District. The principal Junior Civil Judge-cum-Addl. Judicial First Class Magistrate, Nandigama, Krishna District.

The 1° Addl. District and Sessions Judge at Machilipatnam, Krishna District. The Superintendent, Sub-Jail, Nandigama Krishna District.

The Station House Officer, Kanchikacharla Police Station Krishna District. One CC to Sri. Devadass Balantha, Advocate [OPUC] Two CCs to Public Prosecutor, High Court of AP [OUT] One spare copy.

HIGH COURT LK,J DATED:17/02/2021 ORDER DIRECTION 2 o FEB 2021