

Athukuri Srinivasarao vs The State Of Andhra Pradesh on 1 November, 2021

Author: D.Ramesh

Bench: D.Ramesh

THE HON'BLE SRI JUSTICE D.RAMESH

CRIMINAL PETITION NO.5852 of 2021

ORDER:

This petition is filed under Section 438 Cr.P.C to enlarge the petitioner/A-5 on bail in the event of their arrest in connection with Cr.No.28/2020 on the file of Nagarjunasagar Police Station, Guntur District for the alleged offences punishable under Sections 188, 273, 328, 420 r/w 34 IPC and under Sections 57, 58, 63 of the Food Safety and Standards Act, 2006 and under Sections 20(b) r/w 8(c) of the NDPS Act, 1985.

2. It is the case of the prosecution that on 25.02.2020, the petitioners along with other accused were found in illegal transportation of Gutka, Khaini and also 1500 gms of Ganja and the contraband was seized from their possession.

3. Learned Counsel for the petitioner would submit that the products which are being transported will not fall under the definition of food as per Section 3(j) of FSS Act. Cigarettes, Chewing, tobacco, pan masala and chewing material with tobacco, are included in the tobacco products. The tobacco products are only defined under COTPA and not under FSS Act.

4. Therefore, possessing the items referred above i.e. Gutka and Khaini, is not an offence punishable under FSS Act. Even to attract the offences punishable under Sections 188, 273, 328, 420 r/w 34 IPC and under Sections 57, 58, 63 of the Food Safety and Standards Act, 2006 and under Sections 20(b) r/w 8(c) of the NDPS Act, 1985, there must be some material to show that those items consist of poisonous substances endanger to the life of human being, but no such allegation is found in the entire material on record including the report. Therefore, prima facie, I find no material against the petitioner to establish the offences punishable under Sections 188, 273, 328, 420 r/w 34 IPC and under Sections 57, 58, 63 of the Food Safety and Standards Act, 2006 and under Sections 20(b) r/w 8(c) of the NDPS Act, 1985 and the quantity of Ganja found in possession of petitioner is not commercial quantity, consequently Section 37 of the NDPS Act, 1985 has no applicability, apart from that, tobacco products sale or possession is not an offence of FSS Act as held by the Court. Therefore, taking into consideration of the facts and circumstances of the case, the petitioner/A5 is entitled to pre-arrest bail.

5. In the result, Criminal Petition is allowed. In the event of the arrest of the petitioner/A5 in Cr.No.28/2020 on the file of Nagarjunasagar Police Station, Guntur District, Station House Officer

of Nagarjunasagar Police Station is directed to release the petitioners on bail on executing self-bond for Rs.20,000/- with two sureties for the like sum to the satisfaction of the Station House Officer of Nagarjunasagar Police Station, Guntur District.

Consequently, miscellaneous applications pending, if any, shall also stand closed.

____ JUSTICE D.RAMESH Dated 01.11.2021 RD THE HON'BLE SRI
JUSTICE D.RAMESH CRIMINAL PETITION NO.5852 of 2021 Dated 01.11.2021 RD