

Taramareddy Srinivasa Rao, vs The State Of Andhra Pradesh, on 4 February, 2021

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE FOURTH DAY OF FEBRUARY, TWO THOUSAND AND TWENTY, At
: PRESENT : "

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI].

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CRL.P.No. 394 Of 2021 4 '

Between:-

Taramareddy Srinivasa Rao, S/o. Venkanna.

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor,
High Court of Judicature of Andhra Pradesh, At Amaravati

Lease Respondent/Complainant.

Petition filed under Sections 437 & 439 of Cr.P.C. praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to release the petitioners on bail in Cr.No.300 of 2020 of Pamarru Police Station, Krishna District on the file of Additional District & Sessions Judge-cum-Special Judge for Trial of Narcotic Drugs and Psychotropic Substance Act-case at Krishna District,

Machilipatnam.

The petition coming on for hearing, upon perusing the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri Kakumanu Joji Amrutha Raju, Advocate for the Petitioner and of the Public Prosecutor on behalf of respondent/State, the Court made the following

ORDER :

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HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI Criminal Petition No.394 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.') to grant regular bail to the petitioner/A-4 in connection with Crime No.300 of 2020 of the Pamarru Police Station, Krishna District for the offences punishable under Sections 269, 270, 273, 328 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 COTPA Act) and Section 8(c) r/w 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. The case of prosecution is that on 25.12.2020 at about 14-00 hours at the outskirts of Addada village in Pamarru- Gudivada road, Pamarru Mandal, the police found two persons and on seeing the police, they tried to skulk away, but the police caught hold of the petitioner/A.4 and he confessed that on the instructions of his owner-A.3, he received banned gutka/ khainies and Ganja to A.2 and on verification, they found 40 bundles of tobacco products i.e. gutkha and khainee and 2kgs of Ganja 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 Kakumanu Joji Amrutha Raju, learned counsel for the petitioner and the learned Public Prosecutor for the respondent-State.

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4. Learned counsel for the petitioner/A-4 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 CrI.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 2 KGs 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 Cri. M.P.No.346 of 2020 even without considering the scope of Section 37 of the NDPS Act and apart from that, learned counsel also raised other grounds stating that the police failed to follow the procedure contemplated under NDPS Act while drawing the samples. He also submits that the police cannot straight away take the samples under the NDPS Act. As per the judgment of the Hon'ble Apex Court, they must produce the entire ganja before the Magistrate and the Magistrate must see and give a certificate of samples. Before the Magistrate only, the police can take samples under the certificate issued by the Magistrate and further submits that this Court in CrI.P.No.2231 of 2020 vide order dated 10.07.2020 and in CrI.P.No.175 of 2021 vide order dated 18.01.2021 has granted bail to the petitioners therein.

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

6. In reply learned counsel for the petitioner submits that as per the Circular No.13/SOo/2019 dated 15.08.2019 police cannot register a case for transportation of tobacco products.

7. Admittedly, as per the said circular there is no prohibition for transportation of tobacco. As far as the offence under NDPS Act is concerned, the contraband that is seized from the petitioner is only 2 KGs which is not a commercial quantity and there is no bar under Section 37 of the NDPS Act to grant bail to the petitioner. However, as there is nothing on record to show that the petitioner is a habitual offender, this Court deems it appropriate to grant bail to the petitioner.

8. Accordingly, this Criminal Petition is allowed. The petitioner/A-4 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 learned Additional Judicial First Class Magistrate, Gudiwada, Krishna District.

Sd/-T.Madhavi / [TRUE COPY// De REGISTRAR for SECTION OFFICER {The | Additional District and Sessions Judge-Special Judge for Trial of Cases, Krishna District at Machilipatnam. . -- rrhe Personal Judicial First Class Magistrate, Gudiwada, Krishna District

3.The Station House Officer, Pamarru Police Station, Krishna District (re is strict 4,The Superintendent, Central Prison, Rajahmundry, East ° ar OUT)

5. Two CCs to the Public Prosecutor, High Court of A.P., ee

6.One CC to Sri Kakumanu Joji Amrutha Raju, Advocate(OPUC)

7.One spare copy.

TKK HIGH COURT LK.J DT.04-02-2021.

BAIL ORDER RELEASE THE PETITIONER ON BAIL