

**HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**CRIMINAL PETITION No.1642 OF 2022**

**ORDER:-**

This criminal petition under Section 439 of the Code of Criminal Procedure, 1973 is filed, to enlarge the petitioner on bail.

2. The petitioner is A-5 in Crime No.190 of 2021 of Eluru Rural Police Station, West Godavari District.

3. A case under Sections 420, 471, 468 read with Section 34 of the Indian Penal Code, 1860 and Section 8(c) read with Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS' Act) was registered against him along with other accused in the above crime.

4. Briefly stated, it is the case of the prosecution that on 15.06.2021 when the petitioner herein who was A-5, and A-4 were transporting 200 KGs of ganja in two Auto Rickshaws at the instance of A-1 to A-3 that they were apprehended by the police and the contraband was seized from their possession. 100 KGs of ganja was found in one Auto Rickshaw in which the petitioner was travelling and another 100 KGs of ganja was found in another Auto Rickshaw in which A-4 was travelling. Therefore, it is stated that the petitioner herein along with other accused has committed the aforesaid offence.

5. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

6. Learned counsel for the petitioner would submit that the petitioner was arrested on 14.06.2021 and the stipulated period of 180 days for completion of investigation stood expired by 11.12.2021 and the investigation is not completed within the said period and charge sheet is not filed by the prosecution within the statutory period of time. Therefore, the petitioner has filed an application under Section 167(2) Cr.P.C for grant of default bail and in the meanwhile, prosecution has filed an application under Section 36A(4) of the NDPS Act for extension of period of investigation and the lower Court instead of disposing the said petition filed under Section 167(2) Cr.P.C on the same day, waited till the disposal of the petition for extension of period of investigation, thereafter allowed the said petition and thereafter dismissed the petition filed by the petitioner for default bail. He would submit that the impugned order of the learned Magistrate is erroneous and unsustainable under law and thereby prayed for grant of bail to the petitioner.

7. Learned Additional Public Prosecutor opposed the criminal petition. He would submit that even before expiry of 180 days of period of time for completion of investigation, the prosecution has filed petition for extension of period for completion of investigation well within the time i.e. on 22.11.2021 itself and the said petition was allowed extending the period of time for completion of investigation for another 180 days and as such, the petitioner is not entitled for default bail under Section 167(2)

Cr.P.C. He would further submit that the contraband involved in this case is 200 KGs of ganja and 100 KGs of ganja was found in possession of the petitioner herein and it is a commercial quantity and the bar under Section 37 of the NDPS Act applies to the present facts of the case and as investigation is not completed, he would pray for dismissal of the petition.

8. Perused the record.

9. The facts of the case show that the petitioner along with A-4 was apprehended on 14.06.2021 while they were illegally transporting 200 KGs of ganja in two Auto Rickshaws. The petitioner was found to be travelling in one Auto Rickshaw and 100 KGs of ganja was found in his possession and the police seized the said contraband from his possession. The total ganja that is involved in this case is 200 KGs of ganja and the ganja that was found in possession of the petitioner is 100 KGs of ganja which is a commercial quantity. Therefore, the bar contained in Section 37 of the NDPS Act applies to the present facts of the case. There is absolutely nothing to indicate on record that the petitioner is not guilty of committing the said offence. On the other hand, as the petitioner was found to be in illegal possession of 100 KGs of ganja and has been transporting the same in an Auto Rickshaw and at that time he apprehended, the accusation made against the petitioner is *prima facie* well founded.

10. As regards the contention raised by learned counsel for the petitioner regarding entitlement of the petitioner for grant of

default bail under Section 167(2) Cr.P.C is concerned, the record reveals that the petitioner was arrested on 14.06.2021. As per the provisions of the NDPS Act, the investigation has to be completed within 180 days from the date of arrest of the accused. The said period would expire by 11.12.2021. However, the record reveals that the prosecution has filed an application for extension of period for completion of investigation under Section 36A(4) of the NDPS Act well in advance before expiry of 180 days i.e. on 22.11.2021. The said petition was allowed by the Court and the period of time for completion of investigation was extended by another 180 days. Therefore, considering the fact that the time for completion of investigation was extended under Section 36A(4) of the NDPS Act, the lower Court has rightly dismissed the petition filed by the petitioner for grant of default bail under Section 167(2) Cr.P.C.

11. Therefore, in the said facts and circumstances of the case and in view of the bar contained in Section 37 of the NDPS Act and as the investigation in this case is still pending and huge quantity of ganja was found to be in illegal possession of the petitioner, this Court is of the considered view that the petitioner is not entitled to bail at this stage. The judgment relied upon by learned counsel for the petitioner in case of **Md. Enamul Haque vs. Central Bureau of Investigation**<sup>1</sup> is not applicable to the present facts of the case. That is the case where investigation was completed and charge sheet was filed. Therefore, the Apex Court held that there are no reasons for his

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<sup>1</sup> SLP(CrI) No.9463 of 2021

further incarceration in the said facts and circumstances of the case. In the instant case, investigation is not completed and charge sheet is not filed. Therefore, the petitioner is not entitled to bail in the present case for the reasons discussed supra.

12. Resultantly, the Criminal Petition is dismissed.

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**JUSTICE CHEEKATI MANAVENDRANATH ROY**

Date : 22.03.2022  
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**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

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