

(2022) 08 TEL CK 0044

In the Telangana High Court

Case No : Criminal Petition Nos. 5883, 5884, 5892, 5916 Of 2022

Chepurapalli Nageshwar Rao

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 20(b)(ii)(C),
29, 42, 42(2), 50, 50(1), 52, 52A(3), 57

Citation : (2022) 08 TEL CK 0044

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. These Criminal Petitions are filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/ A1 in CrI.P.No.5884, petitioner/A2 in CrI.P.No.5292 of 2022, petitioner/A3 in CrI.P.No.5916 of 2022 and petitioner/A4 in CrI.P.No.314 of 2022 on the file of Jagadgirigutta Police Station, Balanagar Division, Cyberabad, registered for the offences punishable under Section 8(c) read with 20(b)(ii)(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Since all the petitioners are Accused Nos.1 to 4 in Crime No.314/2022, these Criminal petitions are heard together and disposed off by way of this common order.

3. The case of the prosecution is that on 04.05.2022, the Jagathgirigutta Sub Inspector intercepted a car in which four persons i.e. petitioner/A1 in CrI.P.No.5884, petitioner/A2 in CrI.P.No.5292 of 2022, petitioner/A3 in CrI.P.No.5916 of 2022 and petitioner/A4 in CrI.P.No.5883 of 2022, were present. In the dickey of the car 50 packets of ganja was found and when weighed the 50 packets, the weight was 104.69 Kgs. The said contraband was seized.

4. Learned Counsel for the petitioners submits that there is violation of Section 42 and Section 50 of the NDPS Act. There is no mention in the Remand Report that the prerequisite under Section 42 regarding intimation to the Superior Officer, was complied with or not. Further the search of the car was not made in the presence of Magistrate or Gazetted Officer which is mandatory under Section 50 of the NDPS Act.

5. Further the argument is that both Section 42 (2) and Section 50 of the NDPS Act have to be read together. For convenience the section 42 is extracted-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

Section 50 (1) of the NDPS Act reads as follows:

"50. Conditions under which search of persons shall be conducted.—(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate."

6. Learned Counsel for the petitioner further submits that there was no mention of the sampling which was done in the panchanama; and that since there is violation of the standing orders regarding sampling and production before the Magistrate, the petitioners are entitled to be released on bail.

7. In support of his contention he relied upon the Judgment of Supreme Court in Karnail Singh v. State of Haryana (2009) 8 Supreme Court Cases 539 wherein at para 35 the procedure to be adopted was stipulated in the event of receiving any information and intimating the said seizure and the proceedings to the Superior Officer within 72 hours.

8. He also relied upon the Judgment of Honourable Supreme Court in Union of India Vs. Mohanlal and Another (2016) 3 SCC 379 wherein at para-16 it was held as follows;

"16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct."

9. In another Judgment relied upon by the learned Counsel for the petitioner in *Vijaysinh Chandu Jadeja v. State of Gujarat* (2011) 1 SCC 609 Five Judges bench of the Honorable Supreme court has stated that violation to comply with the mandatory provision of Section 50, the proceedings are vitiated.

10. He further relied upon the Judgment passed by this Court in CrI.P.No.4428 of 2022 wherein it was held that in the event of not following the standing orders in sampling and drawal of samples, petitioners are entitled to bail.

11. On the other hand learned Public Prosecutor has produced Case Diary file which contains the information provided to the Assistant Commissioner of Police on 05.05.2022. Further, a report was also given under Section 57 of the NDPS Act on 05.04.2022. An application was filed before the XXXI Additional Metropolitan Magistrate at Kukatpally, Cyberabad, for production-cum-inventory and drawal of samples which is required under Section 52 of the NDPS Act.

12. In the said circumstances, the learned Public Prosecutor submits that the procedure prescribed under the NDPS Act especially under Sections 42 and 50 was scrupulously followed and that the sampling was done before the learned Magistrate. The photographs of the sampling and the contraband seized were also made available by the Public Prosecutor.

13. As seen from the record, the Superior Officer has been duly intimated for which reason there is no violation under Section 42 of the NDPS Act.

14. The contraband was found in the dicky in which the petitioners were travelling. Section 50 contemplates search of a person and the condition to be fulfilled are that such accused person shall be produced before the nearest Gazetted Officer or magistrate for conducting personal search. However, in the present case, the contraband was seized from the dicky of the car for whichid reason Section 50 of NDPS Act is not attracted.

15. In view of the above, the petitioners have failed to prove that there is violation of either under Section 42 and 50 of the NDPS Act. Further, the contraband seized is 104.69 Kgs. which is commercial quantity and as such there are no grounds to grant bail.

16. Accordingly, these bail petitions are dismissed.