

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

CRIMINAL PETITION NO.1583 OF 2021

ORDER:

This Criminal Petition is filed by the petitioners/ Accused 1 and 2 in Crime No. 1080 of 2020 of Narsipatnam Town Police Station, Visakhapatnam District registered for the offences punishable under Sections 20(b)(ii)(c) r/w Section 8(c) of NDPS Act, 1985.

2. Heard the learned counsel for the petitioners and the learned Assistant Public Prosecutor for the Respondent/ State.

3. The brief facts of the prosecution are that on 01.12.2020 the respondent/ police received credible information about illegal transportation of Ganja and conducted vehicle checking near CBM Compound of Narsipatnam town at about 9.30 a.m, one car coming from Chinthapalli side with persons including the driver, the police stopped the car bearing Registration No. AP 16 BQ 8088 and found two white plastic bags available in the Car dikki consisting of Ganja leaves, flowers and stems, each plastic bag containing about 15 kgs of Ganja and as such the above crime was registered, arrested the accused 1 to 3 and seized 30 Kgs of dry Ganja.

4. Learned counsel for the petitioners submits that the petitioners were arrested at the scene of offence on 01.12.2020 and the contraband seized in the above crime is above 30 Kgs of Ganja and it was recovered while transporting the same in a vehicle illegally. But he points out that the head constable concerned, who raided the spot, did not make a personal search of the accused by

following the provisions of Section 50 of N.D.P.S.Act, 1985 and as such the recovery becomes illegal and contrary to the Judgment of the Hon'ble High Court of Delhi in CrI.P.No. 2641 of 2018, dated 15.06.2020.

5. On the other hand, the learned Assistant Public Prosecutor submits that there is a difference between the "personal search" and the "search" under the provisions of NDPS Act and in the case of requirement of personal search, the Investigation Officer would follow the provisions under Section 50 of N.D.P.S.Act, 1985, but not in the search of illegal transportation of the contraband through vehicles and as such the Judgment of the Hon'ble High Court of Delhi has no application in this case.

6. The learned Assistant Public Prosecutor further submits that the investigation is pending, so far 4 witnesses were examined and the petitioners are in jail for the last 140 days on remand. As per the mediators' report, the contraband seized is a commercial quantity and the same was recovered from the dikki of the vehicle, but not from the possession of the body of the accused. There are no merits to be considered at this juncture.

7. In view of the above said facts and circumstances, the criminal petition is dismissed.

JUSTICE B. KRISHNA MOHAN

Date: 20.04.2021

KK

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

CRIMINAL PETITION NO.1583 OF 2021

Date: 20.04.2021

KK