IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MONDAY, THE TWELFTH DAY OF AUGUST

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 4647 OF 2024

Between:

Pangi Chantibabu, S/o Jaggarao, Age 32 years, Coolie, Boddajuvvi Village, Chintapalli Mandal, ASR District

Petitioner/A7

AND

The State of Andhra Pradesh, (Rolugunta Police Station, Visakhapatnam) Rep. by the Public Prosecutor High Court of Andhra Pradesh Amaravati, Guntur District

Respondent/Complainant

Petition under Sections 437 & 439 of Cr.P.C, [New Sections 480 and 483 of BNSS, 2023] is filed praying that in the circumstances stated in the memorandum of grounds filed in support of the Criminal Petition, the High Court may be pleased to direct release of the Petitioner/A-7 on Bail pending enquiry and trial in connection with Cr. No. 149/2023 of Rolugunta Police Station.

The petition coming on for hearing, upon perusing the Petition and the memorandum of grounds filed in support thereof and upon hearing the arguments of Smt. M KULADEEPIKA Advocate for the Petitioner and of PUBLIC PROSECUTOR for the Respondent, the Court made the following

APHC010289152024

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AT AMARAVATI **[3369]**
(Special Original Jurisdiction)

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PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 4647/2024

Between:

Pangi Chantibabu, **...PETITIONER/ACCUSED**

AND

The State Of Andhra Pradesh **...RESPONDENT/COMPLAINANT**

Counsel for the Petitioner/accused:

1.M KULADEEPIKA

Counsel for the Respondent/complainant:

1.PUBLIC PROSECUTOR

The Court made the following ORDER:

1. This is the Criminal Petition filed by Petitioner/Accused No.7 under Sections 480 and 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') [previously filed under sections 437 and 439 of the Code of Criminal Procedure, 1973] seeking regular bail in Cr.No.149 of 2023 of Rolugunta Police Station, Anakapalli District, registered for the offences punishable under sections 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

2. The Prosecution's case, in brief, is that on 30.11.2023, based on credible information concerning the illicit transportation of ganja, the Sub-Inspector of Police, accompanied by his team and mediators, proceeded to

Ninugondu Junction to conduct vehicle inspections. During the vehicle inspection, at approximately 08:00 hours, a juvenile was apprehended with 88 kgs of ganja with three gunny bags, along with an auto rickshaw bearing registration No.AP39 UR 6183 and a Suzuki Access Scooty 125 bearing registration No.AP39 SV 4803. Two other persons managed to escape from the scene. Subsequent investigation disclosed that A.1 was involved in transporting the 88 kgs of ganja using the auto, with the juvenile serving as the carrier, and another individual acting as the front pilot during the transportation. During the course of investigation, the S.I of Police seized the contraband, the auto, and the scooty from the Accused under the cover of mediators' report. Based on the mediators' report, a case in above crime was registered.

3. Learned Counsel for the Petitioner / A.7 contends that the Petitioner is innocent and has been falsely implicated in this case. Notably, the Petitioner's name did not appear as an Accused in the F.I.R. The Petitioner's PT warrant application was filed on 17.02.2024 and executed on 27.02.2024, and he has been incarcerated since that time. The Petitioners had previously moved a bail application, Crl.M.P.No.970 of 2024, before the Special Judge for Trial of Cases under NDPS Act-cum-I Additional District and Sessions Judge, Visakhapatnam (referred to as 'the Special Court'), and the same was dismissed on 02.07.2024; the confession statement of co-accused before the investigation officials is inadmissible in evidence; in fact, considering a similarly placed co-accused's case, this Hon'ble Court granted bail with certain conditions in Crl.P.No.2393 of 2024 on 22.02.2024. Therefore, the learned counsel respectfully requests this Hon'ble Court to consider the Petitioner's case on similar footing and grant him regular bail.

4. Learned Assistant Public Prosecutor, representing the Respondent, vehemently opposed the grant of bail, asserting that the purported contraband in question constitutes a substantial commercial quantity.

5. I have heard both sides. Learned counsel on both sides reiterated their submissions on par with the contentions presented in the Petition and the report. Consequently, the contentions raised by learned counsel need not be reproduced.

6. The material on record indicates that the Petitioner was remanded to judicial custody on 27.02.2024 and has been incarcerated since that date. The Petitioner's counsel contends that the Petitioner made a confession in Cr.No.159 of 2023 on the file of Rolugunta Police Station. Based on such confession, the investigating officer obtained a P.T., warrant and subsequently remanded the Petitioner to judicial custody.

7. As seen from the record, the Prosecution does not allege that the contraband was seized from the Petitioner's possession in the present crime i.e., Cr.No.149 of 2023 of Rolugunta Police Station. Furthermore, the Prosecution has not presented any additional material collected during the Petitioner's judicial custody to demonstrate the Petitioner's involvement in the commission of the offence. It appears that, apart from the confessional statement purportedly made by the Petitioner, no other independent material has been collected to establish the Petitioner's involvement in the commission of the offence.

8. The learned counsel for the Petitioner has brought to the Court's attention that, under similar circumstances, this Court granted bail to A.3 in Crl.P.No.2393 of 2024 in this crime, based on the ground that except the confessional statement, no other material has been collected to show the A.3's involvement in the commission of offence.

9. As seen from the record, there is no material to show that the grant of bail to the Petitioner would defeat the ends of justice. Nothing on the record suggests that the Accused will likely commit an offence if released on bail.

10. At this stage, the allegations against the Petitioner are subject to the trial's outcome. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. It is settled law that mere apprehension that the accused would tamper with the Prosecution evidence or intimidate the witnesses cannot be a ground to refuse bail unless the Prosecution shows that the Accused tried for such tampering/intimidation.

11. The Petitioner's continued preventive custody cannot be based on an unsubstantiated suspicion that he might tamper with the evidence or influence witnesses. Most of the witnesses are shown to be official witnesses and the release of the accused would not cause hampering of investigation. It is not in dispute that the Petitioner has got permanent abode, there is no possibility of fleeing from justice. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

12. Given the above facts and circumstances, this Court is inclined to grant regular bail to the Petitioner/A.7 under the following conditions:

(a) Petitioner/A.7 shall be released on bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty Thousand Only) with two (02) sureties for a like sum each to the satisfaction of the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge-cum-Special Judge for trial of offences under NDPS Act, Visakhapatnam;

(b) On release, the Petitioner/A.7 shall appear before the Investigating Officer concerned once in a week i.e., on every Sunday between 10.00 AM to 01.00 PM for a period of three (03) months;

(c) The Petitioner/A.7 shall not directly or indirectly contact or threaten the witnesses under any circumstances and any such attempt shall be construed as an attempt of influencing the witnesses and shall not tamper evidence and shall cooperate with the investigation.

(d) It is made clear that the Petitioner shall scrupulously comply with the above conditions and breach of any of the above conditions will be viewed seriously and prosecution is at liberty to move an application for cancellation of the bail. However, nothing expressed hereinabove shall be construed as an expression on the merits of the case.

13. Accordingly, the Criminal Petition is ***allowed***.

Miscellaneous applications pending, if any, shall stand closed.

SD/- M.PRABHAKARA RAO
ASSISTANT REGISTRAR

//TRUE COPY// SECTION OFFICER

For

To,

1. The Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge-cum-Special Judge for trial of offences under NDPS Act, Visakhapatnam.
2. The Additional Judicial First Class Magistrate, Narsipatnam.
3. The Station House Officer, Rolugunta Police Station, Anakapalli District.
4. The Superintendent, Central Prison, Visakhapatnam.
5. One CC to SRI. M KULADEEPIKA Advocate [OPUC]
6. Two CCs to PUBLIC PROSECUTOR, High Court of Andhra Pradesh. [OUT]
7. **One spare copy**

ER

HIGH COURT

TMR, J

DATED:12/08/2024

BAIL ORDER

CRLP.No.4647 of 2024

ALLOWED