

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

CRIMINAL PETITIONS NO.6972,9531,10220,10221 OF 2021

CRIMINAL PETITION NO-6972 OF 2021

Between:

Suresh shyamrao pawar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO-10220 OF 2021

Between:

Balaji Ramdas Ware

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO-9531 OF 2021

Between:

Sachin Dagadu Sanap

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO-10221 OF 2021

Between:

Dhyaneshwar Lalasaheb Deshmukh

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **23.02.2022****SUBMITTED FOR APPROVAL:****HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes
3. Whether His Lordship wish to
see the fair copy of the Judgment? yes

LALITHA KANNEGANTI, J

*** HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**
+ CRIMINAL PETITIONS NO.6972,9531,10220,10221 OF
2021

% 23.02.2022

Between:

Suresh shyamrao pawar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Sri C.Hari Preeth

^ Counsel for Respondents : Mr. Sri B.Narsimha
Sharma(Standing Counsel For NCB)

CRIMINAL PETITION NO-10220 OF 2021

Between:

Balaji Ramdas Ware

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Sri J.P.Srikanth

^ Counsel for Respondents : Mr. Sri B.Narsimha
Sharma(Standing Counsel For NCB)

CRIMINAL PETITION NO-9531 OF 2021

Between:

Sachin Dagadu Sanap

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Palle Sri Harinth and
Mr.Naveen Souda

^ Counsel for Respondents : Mr. Sri B.Narsimha
Sharma(Standing Counsel For NCB)

CRIMINAL PETITION NO-10221 OF 2021

Between:

Dhyaneshwar Lalasaheb Deshmukh

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control
Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Sri J.P.Srikanth

^ Counsel for Respondents : Mr. Sri B.Narsimha
Sharma(Standing Counsel For NCB)

< Gist:

> Head Note:

? Cases referred:

- 1) (2022) SCC ONLINE SC 47
- 2) (2016) 3 Supreme Court Cases 379

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**CRIMINAL PETITION Nos.6972, 9531, 10220 and 10221 of 2021****COMMON ORDER:**

Since all these Criminal Petitions arise out of the same crime, they are being disposed of by this common order.

2. CrI.P.No. 6972 of 2021 is filed by petitioner/A1, CrI.P.No.9531 of 2021 is filed by petitioner/A8, CrI.P.No.10220 of 2021 is filed by petitioner/A3 and CrI.P.No.10221 of 2021 is filed by petitioner/A5 under Sections 437 and 439 Cr.P.C., seeking bail in connection with NCB.F. No. 48/1/ 3/2021/ NCB/SUB-ZONE/HYD, registered for the offence punishable under Section 8(c) read with Section 20(b)(ii)(C), 27-A, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The case of prosecution is that on 24.02.2021, on credible information about transportation of ganja to Pune and Osmanabad via Hyderabad from Sileru, Visakhapatnam, the Officials of NCB, Hyderabad, have proceeded to Pedda Amberpet Toll Plaza at 10.30 hours, intercepted three vehicles i.e., Honda City bearing No. MH 02AL 6433, Maruthi Swift Dzire bearing No.MH 25AB 7555 and Bolero Pick-up FB Maxi Truck bearing No.MH 12 PQ 8058 and found the accused therein, and on

search of those vehicles, they seized total 681.800 kgs of ganja under a cover of panchanama.

4. Heard learned counsel for the petitioner/A1 Mr. C. Hari Preeth in CrI.P.No.6972 of 2021, learned counsel for the petitioner/A8 Mr. Palle Srihari Nath in CrI.P.No.9531 of 2021, learned counsel for the petitioners/A3 and A5 Mr. J.P.Srikanth in CrI.P.Nos.10220 and 10221 of 2021 respectively, and learned counsel for the respondent Mr. B. Narasimha Sharma.

5. Learned counsel for petitioner/A1 Mr. C. Hari Preeth submits that the contraband of 30 kgs was seized from the Honda City Car and though the petitioner is unconnected with the alleged offences and only basing on the confessional statement of other accused, the petitioner has been implicated in this case. He submits that the petitioner was arrested and remanded to judicial custody on 26.02.2021 and from the last more than one year, he has been languishing in jail. Learned counsel has relied on the judgment of the Apex Court in **State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta and another¹**, wherein the NCB has approached the Honourable Apex Court for cancellation of the bail granted to the accused and the Apex Court has observed as under;

¹ 2022 SCC Online SC 47

“It has been held in clear terms in Tofan Singh v. State of Tamil Nadu, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail”.

Learned counsel further submits that the Apex Court has dismissed the petition filed by the NCB. In this case also, basing on the confession of the other accused, the respondent has come to the conclusion that the petitioner is behind this crime and in the light of the judgment of the Apex Court, he is entitled for bail. He further submits that the petitioner is ready to cooperate with the investigation and abide by any of the conditions imposed by this Court and hence, his case may be considered for grant of bail.

6. Learned counsel Mr. J.P.Srikanth appearing on behalf of petitioner/A3, who is the driver of Bolero Pick-up Maxi Truck, and the petitioner/A5, who is the driver of Maruthi Swift Dzire, submits that as per the case of the prosecution, 180 kgs. of dry ganja was seized from the Swift Dzire car and 460 kgs. of dry granja was seized from the Bolero Pick-up Maxi Truck. He submits that the petitioners are drivers, who were hired by the

accused, and even as per the case of the prosecution, A1 and other accused have procured the contraband. He submits that the petitioners have no knowledge about the transportation of ganja and without any basis, they have been implicated in this case and hence, their case may be considered for grant of bail.

7. Learned counsel Mr. Palle Srihari Nath, appearing on behalf of petitioner/A8, submits that in the entire complaint, there are no allegations against A8. It is only stated at paragraph No.147 of the complaint that one Mahindra Bolero Pick-up vehicle bearing No.MH 12 PQ 8058 is owned by A3 and the petitioner/A8 was assisting him. He submits that except this, there are no allegations against A8. He further submits that in the entire complaint, it is nowhere stated that the petitioner has knowledge about the transportation of ganja. It is submitted that the petitioner is languishing in jail from the last one year and hence, his case may be considered for grant of bail.

8. On the other hand, learned counsel for the respondent Mr. B. Narasimha Sharma, submits that the role of A1, A3, A5 and A8 is that they have participated in the alleged offence and their active role is stated in the complaint. He submits that A1 is the main conspirator in procuring the

contraband for the purpose of trafficking the same by hiring the vehicles. He submits that both A3 and A5 are not only the drivers of the vehicles but also the owners of those vehicles and in support of the same, they have also filed the documents. Learned counsel submits that A1 and A3 have tampered the vehicle numbers also and the investigation discloses that A2 was actively involved in assisting A1 during procurement and trafficking of ganja and he found to be in constant touch via mobile with A1 and the investigation further revealed that he is also in constant touch with A5, who is the owner-cum-driver of Swift Dzire car arranged by him. A6 is the driver of Honda City Vehicle owned by A1, and A3, who is the owner-cum-driver of Bolero pick up vehicle, was arranged by A1 for the purpose of trafficking of ganja and the investigation further revealed that A1 has arranged A8 as co-driver to assist him in the present trip. It is also further revealed that A1 is in constant touch with A2 and A8. It is stated that A3 is in touch with one Babu Khale, who is an accused in trafficking of 694 kgs. of ganja. Learned counsel submits that even as per the statement of L.W.7, who sold the Bolero pick-up vehicle to A3, that he did not pay the promised amount, which resulted in a police complaint, dated 03.03.2021. It is stated that the amounts were paid through

digital payments, which establishes the ownership of the vehicle. Learned counsel submits that the petitioners cannot take shelter under Section 67 of the NDPS Act and even the judgment relied upon by the learned counsel for the petitioner/A1 is not applicable to the facts of this case because in this case, the contraband is seized from the car and it cannot be said that only basing on the confessional statement of the other accused, the petitioner has been implicated in this case. He submits that a huge contraband of 681.800 kgs is seized in this crime and the petitioners belong to Maharashtra State and in view of the bar under Section 37 of the NDPS Act, petitioners are not entitled for bail. He further submits that in the complaint, NCB has categorically mentioned about the role played by each of the accused and *prima facie*, a case is made out against all the accused and further, as they failed to satisfy the twin conditions under Section 37 of NDPS Act, they are not entitled for bail.

9. This Court has gone through the entire material placed on record i.e. the complaint and the counter filed by the respondent. It appears from the charge-sheet that there are specific overt acts against all the petitioners/accused and the petitioners cannot contend that basing on the confession of

other accused, they are arrayed as accused. The prosecution in the charge-sheet could *prima facie* establish the role of the accused and could connect them to the crime. Even with regard to the ownership of the vehicles also, they have furnished the relevant particulars. In this case, huge commercial quantity of contraband is seized, unless and until the accused satisfy the conditions under Section 37 of the Act, this Court cannot grant bail to them. The learned counsel appearing for the petitioners could not make out a legal ground to satisfy the twin conditions under Section 37 of the NDPS Act, this Court is not inclined to grant bail to the petitioners.

10. Learned counsel appearing for the petitioners submit that though the charge-sheet is filed, it is not numbered so far and there is no likelihood of commencing the trial. It is submitted that because of these delays, the accused are languishing in jail for years together. It is submitted that every accused has a right for free, fair and speedy trial. It is submitted that while considering the bail Application, the provision under Section 37 of the NDPS Act is applied strictly by the Courts, whereas the other provisions of the Act also have to be applied in the same manner. The learned Standing Counsel appearing for NCB submits that though they have filed the

charge-sheet long back, till now S.C. number is not given and in fact, the learned Judge is insisting for the certificate issued by the Disposal Committee. He submits that absolutely there are no latches on the part of the NCB. It is also submitted that the Drug Disposal Committees are not sitting regularly and because of several other connected issues of warehousing, permissions they are not getting the certificate from the Committee. Even for the inventory also, the Magistrates are taking lot of time. They are also not issuing the Inventory Certificate and because of this the charge-sheets are not numbered and ultimately, leading to delay in commencing the trial. It is also submitted that there is huge pendency of cases in both Hyderabad and Ranga Reddy District. As there is only one Special Court and along with NDPS cases they also have to deal with other cases, it is submitted that if a Special Court exclusively for NDPS cases is established in both the Districts, it will solve the pendency issue and will be helpful for the accused. The learned counsel for the petitioners also submitted that in the State the guidelines issued by the Apex Court in ***Union of India v. Mohanlal***² are not at all followed. The contraband is not destructed and the same is recycled. It is stated that as per the guidelines issued by the

² (2016) 3 Supreme Court Cases 379

Apex Court, a Committee of Judges of the High Court has to monitor these things and also issue directions both on administrative as well as judicial side whenever it is required.

11. During the course of arguments, the learned counsel for the petitioners – accused, learned Public Prosecutor and learned Standing Counsel for NCB have placed before this Court several issues faced by them starting from inventory which are leading to delay in concluding trial. This Court also noticed that the State police are lacking expertise in conducting investigation of NDPS cases compared to DRI and NCB officials. Defective investigation ultimately leads to acquittals. Hence, this Court has directed the Principal Secretary, Home Department and the Director General of Police to deliberate on the issue of establishing special police stations for NCB cases and also imparting training for these officers from retired / present officers of NCB / DRI. If separate police stations for the NDPS Cases are established and officers are trained with better, scientific investigating skills, the purpose of the enactment to some extent could be achieved.

12. The menace of drugs in the country as well as in the city is increasing multifold which is very much alarming. The persons, who are involved in the trafficking of drugs are a

big challenge and hazardous to the society at large. Unless an organized system is in place, it will be difficult to control this menace and all the stakeholders are responsible for the consequences. Governments, investigating agencies, courts have to discharge their duties and shall work hand-in-glove in proving the guilt of the accused who are playing with the lives of innocent people, particularly the young generation of this country who are the future hope. The Hon'ble Apex Court in several cases has highlighted the importance of effective investigation, the procedural safeguards, the timely disposals. In spite of all these orders, still, it appears that nothing much is happening. It is high time that the guidelines issued by the Apex Court shall be implemented and appropriate action shall be initiated against the persons who failed to adhere to these guidelines.

13. Section 52-A(2)(C) of the NDPS Act mandates that upon seizure of the contraband, the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated under the provisions and make an application to the Magistrate for purposes of a) certifying the correctness of the inventory; b) certifying photographs of such

drugs or substances taken before the Magistrate as true; c) to draw the representation samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. As per Section 52(A)(3), the Magistrate as soon as possible shall pass orders on such Application. This Court has observed that for making a requisition to the Magistrate as well for the Magistrate to record the same, it is taking lot of time which is resulting in delay at every stage. The Apex Court in ***Mohanlal's case*** (supra), further observed as under:

“ Sub-para (2) of Para 4 of provides that after the Magistrate allows the application under sub-section (3) of Section 52-A, the officer mentioned in sub-para (1) of Para 4 shall preserve the certified inventory, photographs and sample drawn in the presence of the Magistrate s primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in charge of the godown. Para 5 of the Notification provides for constitution of the Drugs Disposal Committee while Para 6 specifies the functions which the Committee shall perform. In para 7 the Notification provides for procedure to be followed with regard to disposal of the seized items, while Para 8 stipulates the quantity or the value up to which the Drugs Disposal Committee can order disposal of the seized items. In terms of proviso to Para 8 if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drugs Disposal Committee is required to send its recommendations nto the head of the department who shall then order their disposal by a high-level Drugs Disposal Committee specially constituted for that purpose. Para 9 prescribes the mode of disposal of the drugs, while Para 10 requires the Committee to

intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para 11 deals with certificate of destruction while Paras 12 and 13 deal with details of sale to be entered into the godown register and communication to be sent to the Narcotics Control Bureau.”

14. Other important issues that are seeking attention of this Court are about filing of charge-sheet, extension petitions. In cases of seizure of huge contraband, police are not filing extension petitions as contemplated under Section 36(A)(4) and the Courts are constrained to grant default bail which is an indefeasible right of the accused. In some cases, it came to light that police are not even aware that such provision exists for extension of time. In some cases, petitions are filed after completion of 180 days or just before completion of 176 or 175th day. The Special Courts are entertaining the Applications and orders are passed after 180th day, sometimes even after 200 days also orders are passed on the extension petitions.

15. Considering all these issues, the following guidelines are framed:

- 1) The Investigating Officers shall make an Application under section 52(A) for preparation of inventory and for

issuance of certificate within seven days from the date of seizure.

- 2) It is brought to the notice of the Court that in view of the number of cases, the Magistrates are not able to complete the Inventory immediately. In any case the Magistrate shall complete the inventory as expeditiously as possible but not later than seven days from the date of Application.
- 3) The Magistrate shall send the copy of the Inventory certificate to the Special Judge within three weeks and a copy shall also be furnished to the Investigating Agency. In case the magistrate is not able to complete the said process within 3 weeks, he shall seek permission of the special judge.
- 4) Once the inventory is completed, the contraband shall be deposited in the warehouses / markhanas and the deposit receipts shall be obtained.
- 5) At the time of filing the charge-sheet, they should also file the deposit receipt. Though the Act does not stipulate such procedure, for maintaining transparency in the system, it is essential.

- 6) It has come to the notice of the Court that there are no proper storage facilities for depositing the contraband for the State police. They are depositing it in the markhanas along with other articles. Government shall take appropriate steps to provide adequate warehouses/ storage facilities for storing the contraband within 6 months from the date of receipt of the order and shall file a report before the High Court Committee.
- 7) Each of the Drugs Disposal Committees shall be provided with separate godowns to store the seized narcotic drugs, psychotropic substances, controlled substances or conveyance seized by the Investigating Officer till the disposal of such materials and sufficient manpower shall be provided and a responsible officer shall be kept as in-charge for the custody of the said godown.
- 8) Soon after receipt of narcotic drugs, psychotropic substances, controlled substances or conveyance in the godown, the godown-keeper shall pass a receipt acknowledging receipt of the contraband and such receipt shall be annexed to the charge sheet filed by the Investigating Officer so that the Court can take

cognizance of the offence basing on the charge sheet / complaint filed under Section 173 of Cr.P.C.

- 9) The Drug Disposal Committee shall see that the contraband and conveyance shall be disposed of expeditiously to avoid their diversion / recycling to open market and lead to filing of the cases against innocent persons.
- 10) The Drug Disposal Committee shall also include a responsible officer from the Pollution Control Board for compliance of environmental protection in disposal of the contraband.
- 11) A special Court exclusively to try the offences under NDPS Act shall be constituted at each of the District Headquarters without allotting any other cases for the speedy and expeditious disposal of the cases.
- 12) This Court is surprised to know that in several police stations, the contraband was never destructed and the police have not taken any steps to destruct the contraband, which is clearly in contravention of the Apex Court's judgment in **Mohanlal's case**. The Hon'ble Apex Court observed that the officers in-charge of the police

station within 30 days from the date of receipt of chemical analysis report shall make an application to the Magistrate under Section 52-(A)(2) in terms of Annexure 2 to the said Notification and the learned Judge shall pass appropriate orders on the said Application within two weeks.

- 13) The Drug Disposal Committee shall dispose of the Applications seeking disposal of contraband within two weeks from the date of Application. The government shall also monitor the functioning of these Committees as it is submitted that the Committee is not sitting on a daily basis.
- 14) The laboratories are taking lot of time for furnishing the report and it is one of the reasons for delay in filing the charge-sheet. The laboratory shall furnish the reports within two months from the date of the Application and the copy of it shall be sent to the special court for NDPS cases and also mark a copy of the same to the Investigating Officer. It is submitted that labs are burdened with work and they have no sufficient manpower. The government shall take appropriate steps

to address this issue and in this regard a report shall be placed before the High Court Committee.

15) The Director General of Police and the Commissioner, Prohibition & Excise shall file a report before the High Court Committee from last five years how much of the contraband is seized, how much is destroyed within 2 months from the date of receipt of the copy of the order. Every year a report shall be filed before the High Court Committee constituted.

16) Petitions are filed seeking extension of time for filing charge sheet in a routine manner by the prosecution without explaining the justifiable reasons and on that ground petitions are dismissed. The Investigating Officer shall explain the progress in the investigation and the specific and compelling reasons for seeking time beyond 180 days. This application shall necessarily be filed at the earliest at least by 160th day. Whenever an Application is filed copy shall be served on the accused.

17) The learned Judge shall not keep the extension Applications pending and at any cost they shall be disposed of as expeditiously as possible, but certainly before the expiry of statutory period i.e. 180 days. If the

Application filed under Section 36 A(4) is kept pending beyond 180 days, the indefeasible right of the accused seeking statutory bail will be defeated.

- 18) In cases of commercial quantity, in view of the bar under Section 37, bails are not granted to the accused unless the twin conditions are satisfied. Apparently, the accused are languishing in jail for years together as under-trialers. In such state of affairs, accused is entitled for a speedy trial. Every endeavor shall be made by the special court in conducting speedy trial. The special court shall scrutinize the charge sheet within a week from the date of receipt of the same and shall register if it is otherwise in order. Schedule shall be fixed and trial shall be concluded as expeditiously as possible not later than six months from the date of appearance of the accused in court in response to the summons issued by the court.
- 19) Investigating Officers shall adhere to the Schedule and serve summons on the material witnesses and ensure their production on the dates without fail.
- 20) Priorities shall be given to the cases of undertrial prisoners while disposing of cases by the special court.

- 21) The law and order police are not having the expertise to conduct the investigation in NDPS cases and ultimately, it is leading to acquittal.
- 22) Officers who are having the knowledge of information and technology as well competent enthusiastic officials shall be selected and training shall be imparted by experts of present NCB/DRI persons as well as retired personnel. With this training, the State of Telangana will also have a robust narcotics investigating team within no time. Investigation shall be exclusively conducted by this special Narcotic wing and basing on the quantity of contraband, the police stations shall be notified.
- 23) The Public Prosecutors and the Additional Public Prosecutors, who are appearing before the Special Courts, shall also be trained. The Director of Prosecutions shall take appropriate steps in this regard.
16. In view of the fact that huge contraband of 634 kgs. is seized in this crime and the prosecution could *prima facie* connect the accused to the alleged crime, this Court is not inclined to grant bail to the petitioners – accused.

17. With the above guidelines, these Criminal Petitions are disposed of.

18. Registrar (Judicial) shall furnish a copy of this order to the Principal Secretary, Home Department, Director General of Police, Director of Prosecutions, Principal District Judges of all the districts forthwith. All the Principal District Judges in turn shall communicate this order to the judicial officers in the unit.

LALITHA KANNEGANTI, J

23rd February 2022

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