

APHC010478922025



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]

TUESDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 9462/2025

Between:

THE SENIOR INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE INTELLIGENCE. VISAKHAPATNAM, REP.BY ITS SPECIAL PUBLIC PROSECUTOR/SR STANDING COUNSEL FOR DRL AND DGGI, HIGH COURT SLATE OF ANDHRA PRADESH AT AMARAVATHI.

...PETITIONER/STATE

AND

- 1.SANTHOSH KUMAR SAHOO, AGE 39 YEARS,S/O. SUDHARSHANSAHOO, KISHOREPRASAD, THANA. GONIA. DISTRICT NAYAGARH - 752 085.
- 2.VANTHALACHANTI, S/O KRISHNA,AGE 39 YEARS,S/O. RESIDING AT LOPUDE BNICHIYYAPET, BOPUDI BUTCHIIYAPEL, ANAKAPALLI.
- 3.KILLO NARSING, S/O.KILLO RAVI, AGE 19 YEARS. RESIDING AT 19, DUPPALAWADA. REVADINIADUGULI. GUEDEM KOTHAVEEDHI VISAKHAPATNAM.

...RESPONDENTS/ACCUSED Nos.1 TO 3

Counsel for the Petitioner/State:

- 1.SANTHI CHANDRA(Sr.STANDING COUNSEL FOR DRI AND DGGI)

Counsel for the Respondents/Accused:

- 1.KADIYAM NEELAKANTESWARA RAO

The Court made the following:

ORDER:

The instant petition under Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') has been filed by the State / Directorate of Revenue Intelligence seeking cancellation of the bail granted to the Respondents / Accused Nos.1 to 3 under Order dated 16.04.2025 in

Crl.M.P.No.379 of 2025 in F.No.DRI/HZU/VRU/48/ENQ-04(Int-04) 2024, DRI, Visakhapatnam by the learned Special Sessions Judge for trial of the cases under the NDPS Act-cum-I Additional District and Sessions Judge, East Godavari, Rajamahendravaram.

2. The case of the prosecution, in epitome, is that, on 05.10.2024 at about 08:00 hours, the officers of the Directorate of Revenue Intelligence, Visakhapatnam Regional Unit, while conducting surveillance at Krishnavaram Toll Plaza, Jaggampeta on NH-16 (Chennai–Kolkata Highway), intercepted a Tata Goods Carrier bearing No. OD2CS2068 and a Maruti Swift Dzire car bearing No. OD25B0009 acting as a pilot vehicle escorting the goods carrier. On inspection, the officers found 24 white HDPE sacks concealed beneath empty fruit crates in the goods carrier, containing 254 packets of ganja (160 packets of 2 kg each and 94 packets of 5 kg each) weighing 808.18 kilograms in total. A-1 to A-3 were apprehended, while two other persons fled from the spot. The contraband, the two vehicles involved, and four mobile phones were seized and the Accused were arrested for offences under the NDPS Act.

3. Heard Ms.Santhi Chandra, learned Senior Standing Counsel for State / DRI and DGGI and Sri Kadiyam Neelakanteswara Rao, learned counsel for Respondents / Accused Nos.1 to 3.

4. Learned Senior Standing Counsel for State / DRI and DGGI would submit that the investigation in the present case has been completed and charge sheet has also been filed before the trial Court on 01.04.2025, which is well within the statutory period. It is further submitted that, certain minor

objections raised during scrutiny, and the objections raised by the Court were received by the Complainant on 16.04.2025 and on the same day, bail was granted to Accused Nos.1 to 3 by the trial Court by holding that the prosecution failed to comply with the objections raised and resubmit the charge sheet and also that, no application under Section 36(A) 4 of NDPS Act seeking extension of time for file charge sheet had also not been filed. It is submitted that minor procedural irregularities cannot be used as a basis to grant bail in serious cases involving commercial quantities of narcotics. It is further submitted that there were no substantial objections to be complied with except for producing CD containing photographs pertaining to the inventory proceedings and creating two separate lists of documents submitted along with the complaint. As such, grant of default bail on that ground is not sustainable under law.

Learned Senior Standing Counsel would further submit that, *prima facie* case is made out against Accused Nos.1 to 3 and huge quantity of contraband i.e., 808.18 kgs of Ganja was also seized from their possession. It is argued that, in view of the embargo as contained in Section 37 of NDPS Act, Accused Nos.1 to 3 cannot be granted bail. It is further submitted that Section 167(2) of Cr.P.C has no application in the matters pertaining to the offences under NDPS Act. It is submitted that the severity of the crime and the potential impact of the seized contraband on the society must be considered while granting bail to the Accused in these types of cases.

Learned Senior Standing Counsel further contends that the magnitude of profit involved in narcotics trafficking provides strong incentives for continued criminal activity. In view of the role played by Accused Nos.1 to 3 in the alleged crime, there is every possibility of hampering the investigation and tampering with the prosecution evidence, if they are released on bail. Learned Senior Standing Counsel finally prays for cancellation of the statutory bail granted to Accused Nos.3 and 4. In support of their contentions, learned Senior Standing Counsel has placed reliance on the judgments of the Hon'ble Supreme Court in **Superintendent, Narcotics vs. R.Paulsamy¹**, **Customs, New Delhi vs. Ahmadalieva Nodira²**, **Durand Didier vs. Chief Secretary, Union Territory of Goa³**, **State of Punjab vs. Baldev Singh⁴**, **State of Kerala vs. Rajesh⁵**.

5. *Per contra*, learned counsel for Respondents / Accused Nos.1 to 3 would submit that the right to statutory bail under Section 167(2) Cr.P.C. is an indefeasible right which accrues when a valid charge sheet is not filed within the prescribed period. It is contended that a defective or incomplete charge sheet returned during scrutiny cannot be treated as a valid filing, and therefore the trial Court rightly considered the date of representation and taking the charge sheet on file as the relevant date.

¹ (2000) 9 SCC 549

² 2004 (166) ELT 302 (SC)

³ 1989 SCR (3) 1025

⁴ CrL.Appeal No.396 of 1990

⁵ 2020 SCC OnLine SC 81

It is further submitted that the prosecution cannot defeat the valuable statutory right of the Accused by filing an incomplete charge sheet merely to overcome the limitation period. Learned counsel would also submit that the embargo under Section 37 of the NDPS Act does not apply to cases of statutory bail. Once the right to default bail accrues, the gravity of the offence or the quantity of contraband cannot be a ground to deny such relief. Since the investigation has already been completed and the charge sheet has been filed, the apprehension of tampering with evidence or interfering with the investigation is unfounded. Hence, prayed for dismissal of the petitions.

6. Having considered the rival submissions on both sides and on perusal of the material placed on record, this Court finds that the charge sheet was admittedly presented before the trial Court on 01.04.2025, which was well within the statutory period. The objections raised during scrutiny were only procedural in nature, namely production of a CD containing photographs relating to inventory proceedings and preparation of separate lists of documents. Such minor procedural defects cannot render the filing of the charge sheet invalid nor can they be treated as non-filing of the charge sheet for the purpose of granting default bail.

7. The Hon'ble Supreme Court in catena decisions had categorically held that the indefeasible right of an Accused to seek statutory bail under Section 167(2) Cr.P.C which is a fundamental right under Article 21, exists only when the Police fails to file the chargesheet within the statutory period. In the

present case, the police report filed on 12.08.2024 which is before the expiry of the statutory period of 180 days. It is also well settled principle of law that, once the charge sheet is presented before the Court within the statutory period, the mere return of the same during scrutiny for compliance of certain procedural defects cannot be construed to mean that the charge sheet was not filed within time.

8. It is pertinent to mention that, in similar circumstances, this Court, in **State vs. Balaji Govindappa**⁶ while dealing with the issue of cancellation of bail framed the point as to Whether an Accused is entitled to default bail under proviso to Section 187(3)(ii) of BNSS when the chargesheet, though filed within the statutory period, is returned on certain defects, which are subsequently complied?. The said order was carried to the Hon'ble Supreme Court of India by way of a Special Leave Petition and the same was dismissed. This Court, while answering the above issue, categorically held as follows:

“81. In Velinedipurnam (supra), a Division Bench of the then Hon'ble High Court of Andhra Pradesh, dealt with a reference in context of Section 173(2) and (5) as to whether filing of incomplete charge-sheet within 60/90 days would enable the accused to seek for his release from custody. It was observed as follows;

“5. If all the necessary details as contemplated under S.173(2), Cr.P.C. are not disclosed in the police report in the first instance, but they are furnished at a later date, perhaps it is for the Court to consider the probative value of those details furnished later during the trial of the case, but to say that the police report filed with certain omissions or gaps is not a valid report contemplated under S. 173(2) is reading something more into the section. Consequently we hold that non-filing of all the enclosures under S. 173(5) along with the report filed under S. 173(2) is not a ground to release the accused on the

⁶ 2025 SCC OnLine AP 3904

premise that full charge-sheet is not filed within the stipulated time.”

(emphasis supplied)

111. It is necessary to refer to the decision rendered by a Division Bench of the Composite High Court of Andhra Pradesh in Venkatarayanakota Krishnappa (supra), which dealt with a reference on the point whether the charge sheet which was filed within ninety days, but was returned for compliance of certain technical objections of not filing the scientific experts report is a proper compliance under section 173 Cr.P.C. and whether the same confer any right on the accused to seek bail as a matter of right as required under Section 167 Cr.P.C. It was observed by the Division Bench that reports which are pending with the Science Laboratory are not within the control of the Investigating Agency and the chargesheet filed therein having satisfied the requirements under Section 173(2) is sufficient compliance to extinguish the indefeasible right of statutory bail. It was also observed that a chargesheet filed containing the particulars mentioned in Section 173 (2) is valid, irrespective of the fact that it did not contain some of the documents as required under Section 173 (5) as they can be produced at a later stage by supplying copies to the Accused, with the permission of the Court.

112. A Coordinate Bench of this Court in Anantha Satya Udaya Bhaskara Rao v. State of Andhra Pradesh⁷¹, dealt with a case wherein the petitioner sought default bail in a case under Sections 302, 201, and 34 of the IPC, along with Sections 3(1)(r), 3(1)(s), and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His plea for default bail was rejected by trial Court on the ground that the police had filed chargesheet within the statutory period in compliance with Section 173(2) Cr.P.C., and the mere non-filing of the scientific expert's report did not entitle the petitioner to default bail under Section 167(2) Cr.P.C. This Court upheld this view, holding that the charge sheet filed was complete in substance, being sufficient for the concerned Court to take cognizance of the offences.

113. A learned Single Judge of the Kerala High Court in Kamalaksha v. Sub Inspector of Police and Another, observed that when a Police Report or Charge Sheet contains necessary details so as to enable the Magistrate to take cognizance of the offence and proceed further, it cannot be said that there is failure of compliance of Section 173(5) Cr.P.C. just because the scientific reports have not been produced along with the Charge Sheet filed by the Police Officer. It was also observed that the question as to whether the prosecution has adduced sufficient evidence to establish its case will be a matter to be decided at the close of the trial and not when cognizance is taken of the offence alleged.”

9. In the present case, the police report was filed on 01.04.2025 which is before the expiry of the statutory period of 180 days. It is well settled that once a charge sheet is filed within the prescribed period, the right to statutory bail under Section 167(2) Cr.P.C. does not accrue. The return of the charge sheet for curing minor defects during scrutiny does not take away the fact that the charge sheet was presented within time. Therefore, the learned trial Judge, in view of the failure of the prosecution in resubmitting the charge sheet by complying with the objections raised, granted statutory bail to Accused Nos.1 to 3, which is not sustainable under law.

10. Further, the material placed on record discloses that a huge quantity of contraband i.e., 808.18 kilograms of Ganja was seized in the present case. The offence alleged is one involving commercial quantity and therefore the rigours of Section 37 of the NDPS Act would also be attracted while considering the question of bail. In such serious offences involving narcotic substances, grant of bail on the basis of minor procedural objections is not justified.

11. In the light of the above circumstances, this Court is of the considered view that the order passed by the learned trial Judge granting statutory bail to Accused Nos.1 to 3 is legally unsustainable and is liable to be set aside.

12. Accordingly, the Criminal Petition is allowed and the Order dated 16.04.2025 in CrI.M.P.No.379 of 2025 in F.No.DRI/HZU/VRU/48/ENQ-04(Int-04) 2024, DRI, Visakhapatnam by the learned trial Court, is set aside. The statutory bail granted to Accused Nos.1 to 3 stands cancelled. The

Respondents / Accused Nos.1 to 3 are directed to surrender before the trial Court within one week from the date of receipt of copy of this order, failing which the trial Court shall take appropriate steps in accordance with law to secure their presence.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date:10.03.2026

L.R.Copy to be marked

B/o.

Dinesh

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Criminal Petition No.9462 OF 2025

DATE:10.03.2026

Dinesh

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No.9462 of 2025

Between:

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...RESPONDENTS/ACCUSED Nos.1 TO 3

DATE OF JUDGMENT PRONOUNCED: **10.03.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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

DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

*** THE HON'BLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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...RESPONDENTS/ACCUSED Nos.1 TO 3

! Counsel for Petitioner : Sri Ms.Santhi Chandra

^ Counsel for Respondents : Kadiyam Neelakanteswara Rao

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> Head Note:

? Cases referred:

1. (2000) 9 SCC 549
2. 2004 (166) ELT 302 (SC)
3. 1989 SCR (3) 1025
4. CrI.Appeal No.396 of 1990
5. 2020 SCC OnLine SC 81
6. 2025 SCC OnLine AP 3904

This Court made the following: