

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY**

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CRIMINAL PETITION No.6957 of 2016

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ORDER:

The petitioner-accused No.3 filed this petition under Sections 437 and 439 of the Code of Criminal Procedure (Cr.P.C.) to enlarge him on bail, who allegedly committed offence punishable under Section 8 (c) r/w. 20 (b) of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act'). The petitioner is in judicial custody since 09.12.2015.

The case of the prosecution is that on 8/9.07.2011 night at 2.00 a.m., when the investigating officer along with his staff was conducting patrolling from Rolugunta to Buchempeta, the petitioner along with other accused came in an auto bearing No.AP-31-Y 7149 from Rathnampeta village and on noticing the police party, they tried to skulk away the place. However, the police party could apprehend the petitioner and other accused and on interrogation, they disclosed their identity and on search of the vehicle, total 55 kgs of ganja was found in the possession of the accused. Immediately, the contraband was seized along with auto bearing No.AP-31-Y 7149 and arrested the accused after following due procedure.

The case of the petitioner is total denial and contended that he is only an auto driver and nothing to do with the offence and that he was implicated falsely. Therefore, the petitioner is entitled to bail since the quantity of ganja involved in the crime is only

55 kgs.

Learned Public Prosecutor opposed the bail application on the ground that the petitioner involved in several other crimes of Narsipatnam and Rolugunta Police Stations and on the same ground, the Sessions Judge rejected the bail and after dismissal of the bail application, without any change of circumstances, the present petition is filed and prayed for dismissal of the bail petition.

Learned Sessions Judge, while dismissing Crl.M.P.No.545 of 2016 in NSC.71 of 2011, referred to various crimes wherein the petitioner was involved i.e., in NSC.111/2012, NSC.286/2015, NSC.45/12 and NSC.71/11 and in all the above cases, the petitioner was found transporting ganja. But the petitioner's contention is that he is only an auto driver and thereby, commission of such offence does not arise. Merely because the petitioner is an auto driver, the commission of such offence cannot be ruled out and on the other hand, it is convenient for him to transport ganja in his own auto.

Narcotic Drugs and Psychotropic Substances Act, is a special enactment and complete code specifying special procedure for investigation and trial of the offences under the Act, so also procedure for grant of bail and pre-arrest bail.

Section 37(1)(b) and (2) of the Act reads as follows :

“(b). No person accused of an offence punishable for the offences under Section 19 or 24 or 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given

an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2. The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

Thus, in view of Section 37 of the Act, if the Court satisfied that there are reasonable grounds for believing the petitioner/accused is not guilty of such offence and not likely to commit similar offence while on bail, the Court may grant bail subject to requirements under the provisions of Cr.P.C. Therefore, the satisfaction of the Court is mandatory to grant bail or decline bail to the petitioner/s/accused in view of the decision of the Apex Court in ***Superintendent, Narcotics Central Bureau, Chennai Vs. R. Paulsamy***^[1].

In the instant case on hand, the petitioner involved in more than three crimes and if or any reason, the petitioner is enlarged on bail, there is every possibility for committing similar crimes while on bail. Therefore, I am not satisfied that the petitioner would not commit similar crime while on bail and that there is *prima facie* material on record to show that he was found in possession of ganja while transporting in his auto.

In view of my foregoing discussion, I find no ground to enlarge the petitioner on bail. Hence, the Criminal Petition is dismissed.

5th May 2016

Rds/Pn

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY**

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DATED : 05.05.2016

Rds/Pn

[\[1\]](#) 2001 CrI.L.J. 117 (SC)