

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12546 AND 12565 OF 2016

COMMON ORDER:

Since both the Criminal Petitions arise out of the same Crime, they are disposed of by way of this Common Order.

2. Criminal Petition No.12546 of 2016 is filed by the petitioners/A.1, A.3 and A.4 under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in connection with Crime No.30 of 2016 of Kothakota Police Station, Visakhapatnam District, registered for the offences punishable under Sections 25 and 20B of the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereas the Criminal Petition No.12565 of 2016 is filed by the petitioner/A.2 seeking release in the event of his arrest in the above mentioned crime.

3. The case of the prosecution is that on receipt of credible information about illegal transportation of Ganja, on 30.05.2016 the police conducted a raid at Cheemalapadu Canal Bridge of Ravikamatham and found two motorcycles coming from opposite side along with four persons and bags. When the police stopped the vehicles, they tried to escape from the place, however, the police apprehended three out of four persons. On search, 100 Kgs of Ganja was seized from five gunny bags. Basing on the said search and seizure, the present crime came to be registered.

4 Insofar as the petitioners/A.1, A.3 and A.4 are concerned, learned counsel for the petitioners submits that the allegations

levelled against the petitioners are all false and they were falsely implicated in this case and insofar as the petitioner/A.2 is concerned, he submits that A.2 was implicated in this case basing on the confessional statement of A.1, which is inadmissible in evidence and no quantity of Ganja was seized from his possession.

5. Learned Public Prosecutor opposed the same contending that huge quantity of Ganja is involved in this case and as *prima facie* case is made out against the petitioners, their request cannot be accepted.

6. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 are universally considered to be among the ones which are categorised as being the most detrimental to all sections of the community. Having regard to the disastrous effects of drug trafficking, particularly to the children and youth of the community where the results are shattering, different countries have prescribed punishments of a high order including in some parts of the World capital punishment for such involvement. An accused facing a drug's charge is a person on par with any other criminal who is accused of a high degree of violence to society. It is also common knowledge that there are no conceivable means of curtailing the repetition and further involvement in these offences and, therefore, to my mind, the legislature itself in this country has prescribed for good reason, that in this class of cases bail should be the exception and not the rule or rather that bail shall be a special

exception and will be available in the rarest of cases. This position cannot, therefore be upset by a situation whereby on technical or hypothetical pleas persons who otherwise would not qualify for bail succeed in circumventing the other provisions of the Act which specifically prohibit the grant of bail.

7. [Section 37](#) of the Narcotic Drugs and Psychotropic Substances Act, 1985 starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. Therefore the power to grant bail under any of the provisions of Cr.P.C. should necessarily be subject to the conditions mentioned in [Section 37](#) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 postulates the conditions or requirements for grant of bail in case of a person accused of an offence punishable for a term of imprisonment of five years or more under the Narcotic Drugs and Psychotropic Substances Act, 1985. It also states that in such cases the Public Prosecutor should be given an opportunity to oppose the application and if the Public Prosecutor opposes the application the Court cannot grant bail unless it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while

on bail. Bail cannot be granted on any other ground in view of the limitation specified in clause (b) of sub-Section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. (*Narcotics Control Bureau v. Krishan Lal and others*¹).

9. Admittedly, in the instant case, the petitioners are charged for the offences punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 which are punishable with imprisonment of more than five years. Therefore, the petitioners' application herein is governed by limitations specified in clause (b) of sub-Section (1) of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985. The accused has to make out a prima facie case proving their innocence in the commission of offence. Therefore, the argument of the learned counsel for the petitioners that entire investigation is almost complete; that the accused are falsely implicated in this case and that they will abide by any conditions in the event of release cannot be a basis for grant of bail.

10. Having regard to the circumstances stated above, I am not inclined to grant bail to the petitioners.

11. Accordingly, both the Criminal Petitions are dismissed.

JUSTICE C. PRAVEEN KUMAR

Date:30.08.2016
INL

¹ (1991) SCR (1) 139