

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12357 OF 2016

ORDER:

The present Criminal Petition is filed by the petitioner/Accused under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in connection with C.O.R. No.92 of 2016 of Prohibition and Excise Station, Parigi, registered for the offence punishable under Sections 8(c) read with 22 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 23.03.2016 when the excise officials were inspecting the vehicles, they intercepted a vehicle at Bongurampally Village Bus stop and on search, found ½ Kg., of Alprazolam concealed in a plastic cover and the petitioner was in possession of the same. A panchanama was drafted, registered a crime and the investigation made revealed that the petitioner, who is an Ex-service man, was indulging in transportation of alprazolam to the toddy shops for mixing the same in the toddy. He did not possess any licence for holding the said substance, which is a prohibited substance and injurious to health.

3. Learned counsel for the petitioner submits that the contraband was seized from the beneath the seat of the petitioner or from the back seat of the auto and as such, it cannot be said that the contraband belongs to the petitioner.

4. Learned Public Prosecutor opposed the same.

5. A perusal of the material on record, more particularly, Crime and Occurrence Report and panchanama would show that the contraband was seized from the bag, which was in possession of the petitioner. Therefore, the arguments of the learned counsel for the petitioner that the contraband was seized from the back seat of the auto is only his defence, for which no material is placed to substantiate the same.

6. 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.

7. 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).

8. Admittedly, in the instant case, the petitioner is charged for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 which are punishable with imprisonment of more than five years. Therefore, the petitioner's 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 and there is no exception for any one, if they are found to be in possession of narcotic substance. Therefore, the argument of the learned counsel for the petitioner that the petitioner is ex-service man cannot form a basis to grant bail. The petitioner has to make out a case *prima facie* proving his innocence in the commission of offence. The petitioner earlier approached this Court by filing Criminal Petition No.8215 of 2016 and the same was dismissed by this Court. In the absence of any changed circumstances and since the grounds raised by the learned counsel for the petitioner do not satisfy the rigour of

¹ (1991) SCR (1) 139

Section 37 of the NDPS Act, I am not inclined to grant bail to the petitioner.

9. Accordingly, the Criminal Petition is dismissed. Since the entire investigation is over, it is needless to mention that the learned Sessions Judge shall dispose of the case as early as possible, preferably within a period of three (03) months from the date of receipt of a copy of this order.

Date:29.08.2016
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JUSTICE C. PRAVEEN KUMAR