

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12420 of 2016

ORDER:

The petitioner, who is accused No.1, filed the present application under Sections 437 and 439 of the Code of the Criminal Procedure (Cr.P.C.), seeking enlargement on bail in crime No.195 of 2016 of Rajanagaram Police Station, Rajamahendravaram District, registered for the offences punishable under Sections 8 (c) r/w.20 (b) (ii) (c) of NDPS Act.

The case of the prosecution is that on 18.07.2016 at about 2.00 p.m. on receipt of credible information about transportation of ganja from Visakhapatnam to Chennai, secured the presence of mediators and other staff, proceeded towards Chakradwarabandam village and found a van bearing No.TN28 AF 6075. On search, Police found A.1 to A.3 in possession of 316 kgs. of ganja in 158 packets and also cash of Rs.37,630/-. After complying with all the mandatory requirements, a panchanama was prepared and then the present crime came to be registered.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent-State.

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.

[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 (***Narcotics Control Bureau v. Krishan Lal and others***¹).

¹ (1991) SCR (1) 139

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.

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. Therefore, the argument of the learned counsel for the petitioner that the entire investigation is almost complete and that he will abide by any conditions in the event of release cannot form a basis for release. The Court has to see whether there are reasonable grounds for believing that the petitioner is not guilty of

the offences and if so, whether the accused is not likely to commit any offence while on bail.

As seen from the material on record, a huge quantity of ganja weighing 316 kgs., which is a commercial quantity, was seized from the possession of the accused. In the absence of any acceptable explanation with regard to possession and as the accused failed to satisfy the rigor of Section 37 of the Act, this Court is not inclined to consider the request of the petitioner.

Accordingly, the Criminal Petition is dismissed.

29.08.2016
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JUSTICE C. PRAVEEN KUMAR