

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12648 OF 2016

ORDER:

Heard learned counsel for the petitioner/A.1 and the learned Public Prosecutor.

2. The present Criminal Petition came to be filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973, by the petitioner/A.1 seeking enlargement on bail in connection with Crime No.824 of 2015-2016 of Prohibition and Excise Station, Prathipadu, registered for the offence punishable under Section 8 (c) read with 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The case of the prosecution is that on 14.02.2016 at about 2:20 PM, on receipt of credible information, police conducted a raid and found the petitioner/A.1 transporting 60 Kgs of dry Ganja in Tata Indigo Manza car bearing registration No.AP-20-AG-1215 by keeping the same in a mica bag, from Prathipadu Village near Visakhapatnam to Vijayawada. The police seized the same after complying with the mandatory requirements. Basing on these allegations, the present case came to be registered.

4. Learned counsel for the petitioner submits that the petitioner is innocent of the offences alleged and if the petitioner is detained, the entire family will be put to starvation and hence, prays to grant bail to the petitioner.

5. Learned Public Prosecutor opposed the same and stating that if the argument of the petitioner can be accepted, the petitioner failed to satisfy Section 37 of the NDPS Act.

6. It is to be noted that the quantity of Ganja seized from the vehicle is about 60 Kgs, which is a commercial quantity. Section 37 of the NDPS Act mandates that in case of seizure of material is commercial quantity, the accused is not entitled to grant bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any such offence while on bail. Earlier the petitioner filed CrI.P.No.10224 of 2016 seeking bail. This Court, vide order, dated 21.07.2016, dismissed the criminal petition.

7. 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.

8) 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.

9) 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

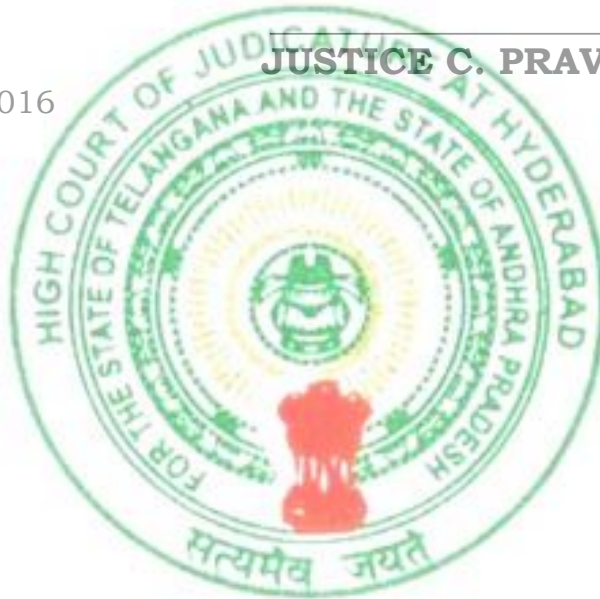
Substances Act, 1985. (***Narcotics Control Bureau v. Krishan Lal and others¹***).

10. Having regard to the above, I am not inclined to grant bail to the petitioner.

11. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Date:01.09.2016
YVL

JUSTICE C. PRAVEEN KUMAR



¹ (1991) SCR (1) 139

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