

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.5310 of 2016

ORDER :

The petitioners, who are accused Nos.1 to 3, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in Crime No.1 of 2016 of Pedabayalu Police Station, Visakhapatnam District, registered for an offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

The averments in the remand report would show that on 04.01.2016 at about 04.30 p.m. on receipt of credible information, the SI of police and his staff along with the mediators proceeded to Gamparai Village and found one lorry bearing No. AP 7 TA 1399 coming from Munchingiputtu towards Paderu. Three persons along with driver were found to be boarding in the said lorry. On seeing police, the lorry driver speeded his lorry. On suspicion, the police parties stopped the said vehicle and at that time the said three persons escaped from that place, but they were caught by the police and apprehended. On search of the vehicle, 644 Kgs. of Ganja worth Rs.12,88,000/- was recovered from the vehicle. Basing on the said arrest and seizure, the present case came to be registered.

Learned counsel for the petitioners submits that the petitioners has nothing to do with the offences alleged and since there is no likelihood of the petitioners being committing the offences alleged, seeks bail.

On the other hand, learned public prosecutor opposed the application. In order to appreciate the same, it would be useful to refer to Section 37 of the Act which is as under:

“Offences to be cognizable and non-bailable-(1)
Notwithstanding anything contained in the Code of
Criminal Procedure, 1973 (2 of 1974) –

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for (offences under Section 19 or Section 24 or Section 27A 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 with 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.”

From the reading of Section 37, it is clear that the limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under Cr.P.C. or any other law for the time being in force.

In **Intelligence Officer, Narcotic Control Bureau, Sub Zone, Kakkanad, Kochi Vs. Lijo K. Jose**^[1], the Apex Court held as under:

“As per Section 37(1)(b), it is a mandatory procedure that the public prosecutor should be given an opportunity to oppose the application. As per Section 37(1)(b)(ii), in case, where the public prosecutor opposes the application, the Court has to consider two aspects for enlarging the accused on bail. The first one is that the Court below should be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. The second ground is that the Court below

should be satisfied that there are reasonable grounds for believing that he is not likely to commit any offence while on bail. Only on the satisfaction of those two aspects, it can be said that the Court has the power to enlarge an accused on bail.”

As seen from the record, the commercial quantity of about 644 Kgs. of Ganja was found with the accused while they were transporting the same in a vehicle. Since the quantity of ganja was found in the vehicle in which they were transporting, it cannot be said that the petitioners are not aware about the transportation of ganja.

[In Madan Lal v. State of H. P.](#)^[2] the Apex Court dealing with the issue of conscious possession, held as under:

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. [Section 35](#) of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of [Section 54](#) where also presumption is available to be drawn from possession of illicit articles.”

In CrI.P.No.2797 of 2016, This Hon’ble Court rejected the request of the petitioners on 08.03.2016.

In view of the above, it can be said that *prima facie* case has been made out against the petitioners.

In view of the above, I am not inclined to grant bail to the petitioners.

Accordingly, the petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

27.04.2016
vhb

[\[1\]](#) 2016 CrI.L.J.594

[\[2\]](#) (2003) 7 SCC 465