

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12914 OF 2016

ORDER:

The present Criminal Petition came to be filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973, by the petitioners/A.4 and A.5 seeking enlargement on bail in connection with Crime No.152 of 2016 of III Town (L&O) Police Station, Rajamahendravaram, registered for the offence punishable under Section 8(a) (C) read with 20(b)(II)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 22.03.2016 at 4:00 P.M., the Inspector of Police, Rajamahendravaram, on receipt of reliable information about the illegal transportation of Ganja, along with staff, after securing Gazetted officers as mediators, proceeded to Gammon Bridge, and while conducting vehicle check, found one Bolero Jeep bearing No.AP 16 DC 9227 and Tata Lorry bearing No.AP 3534 under suspicious circumstances. On seeing the police, A.1 to A.5 got down from the above vehicles and tried to escape, but however they were apprehended by the police. After complying with the mandatory requirements, about 1160 Kgs of Ganja was recovered from the vehicle. On interrogation, A.1 to A.5 confessed about the crime and revealed the names of A.7 and A.8 as well. Basing on the said search and seizure, the present crime came to be registered.

3. Learned counsel for the petitioners mainly submits that A.4 is driver, whereas A.5 is a Cleaner, who has nothing to do with the alleged offence.

4. Learned Public Prosecutor opposed the same.

5. As seen from the record, this Court granted bail to A.7 and A.8, as they were not present at the spot. Insofar as the petitioners are concerned, they were present at the scene of offence and were apprehended while transporting the huge quantity of Ganja i.e., 1160 Kgs., worth of Rs.20,00,000/- in two vehicles. It may be true that the petitioners are driver and the cleaner, but they have been transporting the commercial quantity of Ganja knowing fully well that the act done by them is not permissible under law.

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).

8. Admittedly, in the instant case, the petitioners are 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 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 and there is no exception for any person, if they are found to be in possession of narcotic substance. Therefore, the argument of the learned counsel for the petitioners that the petitioners are driver and cleaner of the vehicle cannot form a basis to grant bail. The petitioners have to make out a *prima facie* case proving their innocence in the commission of offence. Since the grounds raised by the learned counsel for the petitioners do not satisfy the rigour of Section 37 of the NDPS Act, and as the investigation is still pending, I am not inclined to grant bail to the petitioners.

9. Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Date:06.09.2016
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¹ (1991) SCR (1) 139