

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6832 OF 2016

ORDER:

The petitioner-accused No.4 filed this petition under Sections 437 and 439 of the Code of Criminal Procedure (Cr.P.C.) to enlarge him on bail, who allegedly committed offence punishable under Sections 20(b), 27(A) and 29 of the NDPS Act. The petitioner is in judicial custody since 09.12.2015.

The case of the prosecution is that on 13.06.2011 at about 11 hours when the investigating agency along with mediators was conducting vehicle check at Degree College, Narsipatnam in the presence of mediators, A3 to A5 came in an auto bearing No.AP-31-4364 from Chinthapalli proceeding towards Narsipatnam and on noticing the police party, they tried to escape from the place. However, the police party could apprehend the petitioner and other accused and on interrogation, they disclosed their identity and on search of the vehicle, 24 packets of ganja each 2 kgs were found in the possession of the accused. Immediately, the contraband was seized along with auto bearing No.AP-31-4364 and arrested the accused under panchanama after following due procedure.

The case of the petitioner is total denial and contended that he is only an auto driver and nothing to do with the offence and that he was implicated falsely. It is further contended that even in the charge sheet he was not shown as accused. Therefore, the petitioner is entitled to bail since the quantity involved in the crime is only 2 kgs.

Learned Public Prosecutor opposed the bail application on the ground that the petitioner involved in several other crimes of Narsipatnam and Rolugunta Police Stations and on the same ground, the Sessions Judge rejected the bail and after dismissal of the bail application, without any change of circumstances, the present petition is filed and prayed for dismissal of the bail petition.

Learned Sessions Judge, while dismissing Crl.M.P.No.544 of

2016 in NSC.45 of 2012, referred to various crimes wherein the petitioner involved viz., in NSC.111/2012, NSC.286/2015, NSC.45/12 and NSC.71/11 and in all the above cases, the petitioner was found transporting ganja. But the petitioner's contention is that he is only an auto driver and thereby, commission of such offence does not arise. Merely because the petitioner is an auto driver, the commission of such offence cannot be ruled out and on the other hand, it is convenient for him to transport ganja in his own auto.

Narcotic Drugs and Psychotropic Substances Act, is a special enactment and complete code specifying special procedure for investigation and trial of the offences under the Act, so also procedure for grant of bail and pre-arrest bail.

Section 37(1)(b) and (2) of the Act reads as follows :

“(b). No person accused of an offence punishable for the offences under Section 19 or 24 or 27-A 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 while on 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.”

Thus, in view of Section 37 of the Act, if the Court satisfied that there are reasonable grounds for believing the petitioner/accused is not guilty of such offence and not likely to commit similar offence while on bail, the Court may grant bail subject to requirements under the provisions of Cr.P.C. Therefore, the satisfaction of the Court is

mandatory to grant bail or decline bail to the petitioner/s/accused in view of the decision of the Apex Court in **Superintendent, Narcotics**

Central Bureau, Chennai Vs. R. Paulsamy ^[1].

In the instant case on hand, the petitioner involved in more than three crimes and for any reason, the petitioner is enlarged on bail, there is every possibility for committing similar crimes while on bail. Therefore, I am not satisfied that the petitioner would not commit similar crime while on bail and that there is *prima facie* material on record to show that he was found in possession of ganja while transporting in his auto.

The contention of the petitioner is that the petitioner is not arrayed as accused but as seen from the contents of last lines of the charge sheet, it is made clear that further investigation and arrest of A2, A4 and A5 who are absconding is pending. Therefore, charge sheet is not filed against them. Thus, the crime against A2, A4 and A5 is separated as they are absconding by then. In such circumstances, mere failure to array the petitioner as an accused in the charge sheet is not a ground since the case against the petitioner was separated by following necessary procedure.

In view of my foregoing discussion, I find no ground to enlarge the petitioner on bail. Hence, the Criminal Petition is dismissed.

(M.SATYANARAYANA MURTHY, J)

5th May 2016

RRB

^[1] 2001 CrI.L.J. 117 (SC)