

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12556 OF 2016

ORDER:

The present Criminal Petition is filed by the petitioner/A.1 under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in connection with Sessions Case No.138 of 2016 on the file of the I Additional District and Sessions Judge at Rajahmundry, East Godavari District (Crime No.02 of 2016 of Jaggampet Police Station, East Godavari District, registered for the offence punishable under Section 8(c) read with 20(B)(1) of the of the Narcotic Drugs and Psychotropic Substances Act, 1985).

2. The case of the prosecution is that, the Sub-Inspector of Police, Jaggampeta Police Station having received information about transportation of Ganja proceeded to Ananthalakshmi Engineering works at the outskirts of Ramavaram Village, Jaggampeta Mandal, on 03.01.2016 at about 4:00 P.M., at NH-16 road and found a Van bearing No.AP 20 Y 0129 coming from Visakhapatnam side. On seeing the police, A.1, A.3 and A.4 got down from the vehicle and tried to abscond. Then, the police chased and detained them. After complying with mandatory provisions, the police searched the van and found 240 Kgs., of Ganja kept in covers. After lifting samples of Ganja for chemical analysis, the police seized the same under the cover of mediators' report. Basing on the said search and seizure, the present crime came to be registered.

3. Learned counsel for the petitioner submits that the petitioner is physically handicapped person and without the help of third person, he is not in a position to even to walk and it is very difficult for him to continue in jail.

4. Learned Public Prosecutor opposed the same contending that since the Section 37 of the NDPS Act did not carve out any exception to physically challenged persons, the petitioner is not entitled for bail.

5. A perusal of the material on record would show that earlier the petitioner approached this Court by way of filing Criminal Petition No.9947 of 2016, during the course of investigation, which was dismissed as withdrawn. The present petition is filed by the petitioner seeking bail on the ground that entire investigation is over and charge sheet is filed.

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).

9. Admittedly, in the instant case, the petitioner is charged for the offences punishable 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, in which there is no exception for a woman or a physically handicapped person, if they are found to be in possession of narcotic substance. Therefore, the argument of the learned counsel for the petitioner that the petitioner is physically challenged person cannot be a basis for grant of bail. The accused has to make out a *prima facie* case proving his innocence in the commission of offence. Since the grounds raised by the learned counsel for the petitioner do not satisfy the rigour of Section 37 of the NDPS Act, I am not inclined to grant bail to the petitioner.

10. Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Date:30.08.2016
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¹ (1991) SCR (1) 139