

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 2791 OF 2017

ORDER:

This Criminal Petition under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A-4 on bail in S.C.No.138 of 2016 pending on the file of I Additional District and Sessions Judge-cum-Special Judge for trial of Cases under NDPS Act, Rajahmundry, East Godavari District and he is in judicial custody since 03.01.2016.

The case of the prosecution is that on 03.01.2016 on receipt of credible information about the transportation of ganja, the Sub-Inspector of Police, Jaggampeta Police Station conducted a raid along with two mediators. As per their information, they found a van bearing No. AP.20Y0129 proceeding from Visakhapatnam to Rajahmundry side. On conducting search found 240 kgs of ganja. After following procedure lifted samples, seized the contraband and arrested the accused under the cover of mediators report. On the basis of the mediators report, a case was registered in Crime No.2 of 2016 under Sections 8 (c), r/w 20 (b)(ii) (c) of N.D.P.S. Act. After completion of investigation, police filed the charge sheet against the petitioner and other accused in S.C.No.138 of 2016.

During hearing, the learned counsel for the petitioner mainly contended that A-1 is the person indulged in transportation of ganja and this petitioner was engaged as coolie in the said business. Therefore, he is not liable for punishment. But, Section 8 (c) of the N.D.P.S. Act says that no person shall—produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into

India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation from the competent authority, the person who involves in any such offence and that he is equally liable for the offence.

This petitioner allegedly engaged in transportation of ganja, as such he is also equally liable for punishment due to contravention of Section 8 (c) of the Act along with main accused A-1 who allegedly engaged this petitioner as coolie for transportation of ganja. Therefore, Section 37 of the N.D.P.S. Act is applicable as the total quantity is more than 200 kgs.

Section 37 of NDPS Act created an interdict to grant bail for an offence punishable under various provisions of the Act, where a commercial quantity of contraband is involved. According to Section 37(1)(b) of NDPS Act, unless the Court records its satisfaction that the petitioner did commit no offence and that he would not commit no offence again while on bail under Section 439 Cr.P.C in serious offences like the offence punishable under Sections Sections 8 (c), r/w 20 (b)(ii) (c) of N.D.P.S. Act.

In **State of Madhya Pradesh v. Kajad**¹ the Supreme Court held that the purpose for which the NDPS Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the Court that a person accused of an offence, punishable for a term of imprisonment of five years

¹ AIR 2001 SC 3317

or more, shall generally be not released on bail. Negation of bail is the rule and its grant is an exception under sub clause (ii) of clause (b) of Section 37(1). For granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail.

In **Maktool Singh v. State of Punjab**² Supreme Court held that for all the offences punishable more than five years, the Courts power to release the accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

In **Customs, New Delhi v. Ahmadalieva Nodira**³ held that the Court has to keep in mind two conditions i.e, the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail, the conditions are cumulative and not alternative, the satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds and the expression reasonable grounds means something more than prima facie grounds and it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences.

In view of the law declared by the Apex Court in the judgments referred supra, Section 37 of NDPS Act, unless the Court concludes that the accused is not guilty based on reasonable ground and that there is no

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

possibility of committing similar offences while on bail, where the offences are punishable for more than five years, he shall be enlarged on bail.

Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Section 437, 438 & 439 are applicable. Besides the application of general provisions of Cr.P.C, certain safeguards are provided in the Act to grant bail, while placing reversal burden in view of Section 35 & 54 of NDPS Act. Therefore, the general principles governing bails under Section 437, 438 & 439 are equally applicable to the bail applications filed for the offences punishable under Sections 8(C) read with Section 20(b)(ii)(C) of NDPS Act for enlarging the accused in the above crime under NDPS Act, where commercial quantity is involved.

In view of the law declared by the Supreme Court in the judgments in **Kajad, Maktool Singh, Customs New Delhi** cases referred supra and Section 37 of the Act, the petitioners are not entitled to claim bail, as the quantity of ganja involved is commercial quantity and the offence committed by them is punishable with imprisonment for term more than five years and granting bail is an exception and negating bail is a routine, in view of the law declared by the Apex Court in the judgments referred supra. Hence, on overall consideration of the entire material available on record, I find no ground to enlarge the petitioners on bail.

However, at the end of the arguments, the learned counsel for the petitioner requested this Court to direct the Special Judge for trial of Cases under N.D.P.S. Act to try and decide the S.C.No.138 of 2016 as expeditiously as possible.

Having regard to the facts and circumstances of the case, I find that it is not a fit case to grant bail to the petitioner. Hence, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, the I Additional District and Sessions Judge-cum-Special Judge for trial of Cases under NDPS Act, Rajahmundry, East Godavari District is directed to try and decide the case i.e. S.C.No.138 of 2016 as expeditiously as possible, in any event not later than six months from today.

Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

Date:21.04.2017
Ccm



JUSTICE M. SATYANARAYANA MURTHY

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.2791 OF 2017

Date:21.04.2017

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