

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Criminal Petition No.465 of 2017

ORDER:

This petition is filed under Sections 437 and 439 of Criminal Procedure Code to enlarge the petitioner-A.5 on bail in Crime No.249 of 2015 of S.Kota Police Station, Vizianagaram District, for the offences punishable under Section 8(c) r/w.20 (b) of NDPS Act.

The case of the prosecution is that on 02.12.2015 at about 6.00 p.m. while Police were conducting vehicle check in front of Boddavara Village, S.Kota, they received credible information about illegal transportation of ganja. They found A.1 and A.2 transporting 108 packets containing Kgs.200-400 grams of ganja in Bolero Max pickup vehicle bearing No.AP31 TC 7028. A.1 alleged to be working as a coolie in the tractor, which belongs to A.3, who is having four or five Bolero vehicles for the purpose of transporting ganja and when they reached GCC Check Post of Boddavara village of S.Kota Mandal, the gate man of the check post intercepted the Bolero Max and due to fear, A.1 left the vehicle at the spot and absconded and A.2 and A.3 ran away from the place on a motor cycle. As per C.D., A.1 is the driver of Bolero Maxi, A.2 is the owner of the said vehicle and A.3 is also participated in transportation of ganja. During interrogation, the other accused arrested in this case disclosed that A.5 is the main person, who is carrying on business of purchase and sale of ganja and played predominant role in smuggling ganja by motivating people by offering more money and acting behind the screen by depositing money in the bank accounts for transportation of ganja to other States to make money.

The main contention of the petitioner is that the entire investigation is completed and charge sheet is also filed and he was produced before the Court on execution of P.T. Warrant and remanded to judicial custody by the Sessions Court at Vizianagaram on 11.10.2016 and since then he is in judicial custody.

It is the main contention of the petitioner that except the confessional statement of co-accused, no other material is available and he cannot be kept in pre-trial detention *ad infinitum* or till completion of trial as it would infringe the fundamental right guaranteed to him and prayed to enlarge the petitioner on bail.

Public Prosecutor opposed the bail application on the ground that the petitioner is the main person for whom the other accused were procuring ganja and there is lot of material to show that the petitioner was depositing huge amount to the credit of other accused for procuring ganja, etc. and apart from that he was arrested and released on bail in crime No.6/2015 of K.D.Peta Police Station for the identical offence i.e. offence punishable u/s.8 (c) r/w.20 (b) of NDPS Act. Therefore, he expressed the apprehension that if the petitioner is enlarged on bail there is every possibility of committing similar offences and the quantity of ganja involved in the crime is commercial quantity.

A perusal of the entire CD and the material collected during investigation disclose that this petitioner is the kingpin for whose benefit the other accused were procuring ganja and no doubt except the statement of co-accused, no other material is available. But, still it inspires the confidence. That apart, the depositing of amount to the credit of other accused in banks is another

additional link to point out the complicity of the petitioner in commission of offence.

On over all consideration of entire material on record and the CD, it is clear that petitioner-A.5 is the main accused, who was transacting business through other accused either by engaging their vehicles or by engaging them as drivers, coolies, etc. The total ganja seized from the possession of the co-accused is a commercial quantity and transportation of said ganja is for the benefit of A.5. Therefore, Section 37 of NDPS Act will apply to the case on hand.

Moreover, in **State of Madhya Pradesh v Kajad**¹ the Apex Court held that when a person who indulged in an offence punishable for more than five years of imprisonment under the provisions of the Act cannot be released generally on bail. The Supreme Court in para 5 of the judgment discussed the scope of Section 37 of the Act and concluded that the purpose for which the 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 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 the 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

¹ 2001(7) SCC 673

offence while on bail. It is further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

It is evident from the material on record that the petitioner involved in earlier crime No.16/2015 and thereby the apprehension of commission of an identical offence while on bail cannot be ruled out. Thus, in view of the bar u/s.37 of the NDPS Act, it is difficult to release the petitioner on bail. However, taking into consideration, the facts and circumstances of the case, the Special Court for Trial of Cases under NDPS Act-cum-I Additional District & Sessions Judge, Vizianagaram, is directed to try and decide the matter as expeditiously as possible treating the petitioner as an under trial prisoner in any event not later than six months from the date of receipt of a copy of this order.

In the result, the Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 30.01.2017
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