

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.547 OF 2017

ORDER:

This petition is filed by the petitioner under Sections 437 and 439 of Cr.P.C. to enlarge the petitioner on bail in Crime No.103 of 2016 of Station House Officer, Annavaram Police Station for the alleged offences punishable under Sections 8 (c) read with 20 (b) (ii) (c) of N.D.P.S. Act. (For short 'the N.D.P.S. Act').

Petitioner herein is A.1 in the above crime.

The case of the prosecution, in brief, is as follows.

On 21-8-2016 at about 02.00 P.M., the Inspector of Police, Tuni Rural Circle, Incharge Circle of Prathipadu Circle received reliable information about the transportation of ganja, as such he came to Annavaram Police Station and passed information to S.I. of Police, Annavaram Police Station and secured the presence of other police staff and mediators and at about 04.00 P.M., he reached Gidajam village outskirts, Dhanamkonda above poramboku site near bushes and found the petitioner and other accused in the bushes and on seeing the police, they left the gunny bags and tried to abscond and police chased them at the distance of 50 feet and questioned them and they revealed their identity as that of A.1 and A.2 and that the ganja is in gunny bags. Police found four gunny bags therein and all bags contain hundred kgs. of ganja total. Petitioner and other accused persons confessed the manner in which they secured the ganja. Police lifted the samples from the contraband for chemical

analysis purpose in the presence of mediators and seized the contraband and arrested the petitioner and other accused. Hence, petitioner committed an offence punishable under sections referred above.

Counsel for the petitioner would contend that Section 50 of NDPS Act is not complied with by the investigating agency at the time of search and seizure of contraband i.e., ganja and further contended that petitioner is languishing in jail since more than 150 days and on account of pre-trial detention, he deprived of personal life and prayed to enlarge the petitioner on bail.

During hearing, learned counsel for the petitioner reiterated those contentions, whereas the learned Public Prosecutor for the State of Andhra Pradesh would contend that quantity involved in the offence is commercial quantity and thereby, Section 37 of the NDPS Act is applicable and unless the court comes to a conclusion that the petitioner did commit no offence, the court cannot enlarge the petitioner on bail and prayed to dismiss the petition.

As seen from the contents of mediators report dated 21-8-2016, police conducted raid and found the petitioner and other accused persons while holding Ganja in their hands in bushes in Gidajam village and on seeing the police, they tried to abscond and police chased them at the distance of 50 feet and questioned them, for which they revealed their identity and stated that the ganja is in gunny bags and after following the necessary procedure, they

prepared panchanama and lifted sample under the cover of panchanama and arrested the petitioner and other accused.

Learned counsel for the petitioner contended that on account of non-compliance of Section 50 of the NDPS Act, the entire investigation is being vitiated.

Section 50 of the NDPS Act is fulfilled by personal search but the officer who searched the petitioner though Excise Officer, does not amount sufficient compliance in view of the judgment of the apex court reported in *STATE OF RAJASTHAN v. PARMANAND AND ANOTHER* ⁽¹⁾. Therefore, proceedings are vitiated for non-compliance of Section 50 of NDPS Act prima facie in the present facts of the case.

The petitioner allegedly transported Ganja. He did not dispute the transportation but contended that he has no knowledge about the nature of goods being transported and he is innocent of alleged offences.

No doubt the petitioner is a coolie who is found transporting Ganja but transportation of ganja without authorization or licence is an offence.

According to Section 8 of NDPS Act, *no person shall*

- (a) *cultivate any coca plant or gather any portion of coca plant; or*
- (b) *cultivate the opium poppy or any cannabis plant; or*

¹ (2014) 5 SCC 345

(c) *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 authorization also in accordance with the terms and conditions of such licence, permit or authorization; Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf; 1 (provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.)*

Thus, the transportation of Ganja is contravention under Section 8 (c) of NDPS Act and when the petitioner is found transporting Ganja of 100 kgs, it is a commercial quantity.

One of the contentions raised by the learned counsel for the petitioner is that he has no knowledge about the nature of goods being transported. But, Sections 35 and 54 of the Act contains presumption as to knowledge and it is reversal burden placed on the petitioner to explain their possession. Therefore, in view of Sections 35 and 54 of the Act, it is not open to the petitioner to contend at this stage that he has no knowledge, of course, the presumptions contained under Sections 35 and 54 are rebuttable and till such presumption is rebutted, he is presumed to have knowledge about the goods being transported in the vehicle and therefore, this contention holds no substance.

However, in the present case, 100 kgs of Ganja was seized and Section 37 of the NDPS Act is applicable as quantity involved in this case is commercial quantity as per the Schedule. In *GADE LAKSHMI MANGRAJU ALIAS RAMESH V. STATE OF ANDHRA PRADESH* ⁽²⁾, the apex court specifically held that the purpose for NDPS Act was enacted.

Thus, in view of the principles laid down in the above judgments, punishment prescribed for the offences punishable under Sections 8 (c) read with 20 (b) (ii) & (c) of NDPS Act, 1985 is imprisonment of five years and hence, the petitioner cannot be granted bail and such grant of bail is an exception.

In the present case, commercial quantity of 100 kgs was found transporting, therefore, in view of the law laid down in *STATE OF*

² 2001 Cri LJ 3317

*MADHYA PRADESH v. KAJAD*³, the petitioner is not entitled to claim any bail.

Hence, I find no ground to conclude that petitioner did commit no offence in view of the specific admission about transporting Ganja without knowledge, about the nature of the goods being transported. Therefore, the petitioner is not entitled to claim bail.

In view of the facts and circumstances of the case, the trial court concerned is directed to complete the trial of the matter as expeditiously as possible and not later than six months after filing charge sheet.

Accordingly, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.



JUSTICE M.SATYANARAYANA MURTHY

Dated 31-1-2017.

Dvs.

³ AIR 2001 SC 3317

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 31-1-2017.

Dvs