

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3005 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 by the petitioners/A.1 to A.4 to enlarge them on bail in Crime No.28 of 2017 of Kotananduru Police Station, East Godavari District, registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). They are in judicial custody since 08.03.2017.

The case of the prosecution, in brief, is that on 20.02.2017 during vehicle check at the outskirts of Bangarayyapeta Village, Kotananduru Mandal, the police found one cream colour car coming from Suraparajupeta side towards Tuni side, on seeing the police, the driver of the car stopped the vehicle and tried to skulk away, the police tried to catch the driver but in vain. On search of the vehicle, the police found 60 kgs. of ganja in three gunny bags, each bag containing 10 packets and each packet containing 2 kgs., of ganja and lifted samples from the contra band, seized the same under the cover of panchanama. On the strength of the same, the police registered the above crime and issued F.I.R.

During the course of investigation, the petitioners were arrested on 07.03.2017 in the presence of mediators near sugar cane weigh bridge and interrogated about the transportation of ganja, remanded the petitioners to judicial custody.

The main contention of the petitioner is that though they were not physically found at the scene of offence on 20.02.2017, and during investigation on 07.03.2017 who were present at particular place, were

falsely implicated as accused and that they did commit no offence, prayed to enlarge the petitioners on bail.

Learned counsel for the petitioners reiterated the above contention and specifically drawn the attention of this court to ground No.4 in the grounds of bail application which relates to the seizure of contra band and apprehension of the petitioners etc., and he contended that the petitioners are not concerned with the offence and prayed to grant bail to the petitioners.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the petitioners are the accused who attempted to skulk away during vehicle check and thereby they are arrested near sugar cane weighing bridge on 07.03.2017 and confessional statement was recorded under Section 53-A of the NDPS Act and they are relevant under the provisions of the NDPS Act and that huge quantity of ganja i.e. commercial quantity was seized from the petitioners, it is an offence punishable under Section 8(c) read with 20(b) (ii)(c) of the NDPS Act and such persons cannot be enlarged on bail and placed reliance on the Judgment of the Apex Court in **State of Madhya Pradesh v. Kajad**¹.

As seen from the material on record, more particularly, mediators report dated 20.02.2017 at about 4.00 p.m. Head Constable 2434 GTN Reddy on receipt of some credible information, immediately proceeded to conduct vehicle search to find out transportation of ganja and during search, on seeing the police, the driver of the car bearing No.AP 16 U 5067 tried to skulk away, but the police did not apprehend, later near sugar cane weigh bridge, as the petitioners were found in suspicious circumstances, apprehended and recorded their confessional statement

¹ AIR 2001 SC 3317

duly signed by the petitioners and other mediators. Therefore, Section 53-A of the NDPS Act enables the officers empowered under Section 53 of the NDPS Act for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under the NDPS Act, the truth of the facts which it contains, when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or; when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice; the provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

However, it is difficult to conclude at this stage that the confessional statements can be used to enrope these petitioners with the offence. In **Kanhaiyalal v. Union of India**² the Apex Court held that at the stage of granting bail in NDPS cases the confessional statement of driver of the vehicle can be accepted. Thus, basing on confessional statement of co-accused, this Court *prima facie* conclude that the petitioner committed the offence, for limited purpose of deciding bail application. The material on record that these petitioners in their confessional statement disclosed that they were the persons,

² AIR 2008 SC 1044

who are found transporting ganja i.e. 60 kgs. In such case the presumption under Section 35 and 54 of the NDPS Act would arise and the burden is upon them to disprove the same, in view of the reversal burden is placed on the petitioners. However, the quantity of ganja involved in the offence is 60 kgs., which is a commercial quantity. Unless court comes to the conclusion that there are reasonable grounds that these petitioners did commit no offence, there is no possibility of fleeing away from justice, the petitioners cannot be enlarged on bail.

In **State of Madhya Pradesh v. Kajad** referred above the Apex 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 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**³ the Apex 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.

³ (1999) 3 SCC 321

In **Customs, New Delhi v. Ahmadalieva Nodira**⁴ the Apex Court 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 to supra, unless the Court concludes that the accused is not guilty based on reasonable ground and that there is no possibility of committing similar offences while on bail, where the offences are punishable with imprisonment of 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 Sections 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 the NDPS Act for enlarging the accused in the above crimes under NDPS Act, where commercial quantity is involved.

The normal principle is that, unless the Court comes to a conclusion that there are no reasonable grounds to conclude that the

⁴ 2004 (1) JCC 662

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petitioner/accused did commit no offence and that there is no apprehension of interference in case the petitioner is enlarged on bail, the Court can enlarge the accused on bail, here the material *prima facie* lead me to conclude that the petitioners committed the offence.

Thus in view of the principles laid down by the Apex Court, the petitioners are disentitled to claim bail as the offence allegedly committed by the petitioners is punishable with imprisonment for more than 5 years. Hence, I find no ground to enlarge the petitioners on bail. Consequently, the criminal petition is liable to be dismissed in view of the principle laid down by the Apex Court in **State of Maharashtra v. Kajad** referred above.

The other contention of the counsel for the petitioners is that the petitioners are in judicial custody since 07.03.2017 and that long period of incarceration in jail would defeat the right of fair trial. Therefore, sought for enlarging the petitioners on bail.

Long time pre-trial detention in jail is not a ground to enlarge the petitioners on bail in view of the principle laid down by the Apex Court in **Chenna Boyanna Krishna Yadav v. State of Maharashtra and another**⁵. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

19.04.2017
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⁵ (2007) 1 SCC 242