

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6670 of 2017

ORDER:

This Criminal Petition is filed, by the petitioners-accused Nos.1 and 3, under Sections 437 and 439 of Cr.P.C., seeking bail in Crime No.15 of 2017 on the file of the Station House Officer, Mothugudem Police Station, East Godavari District, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

2. The learned counsel for the petitioners strenuously submitted that the trial Court failed to observe that the investigation agency has not followed the procedure as contemplated under Sections 42 and 50 of the NDPS Act; therefore, it is a fit case to grant bail to the petitioners. She further submitted that the petitioners are falsely implicated in this case and investigation is almost completed except filing of the charge sheet.

3. *Per contra*, the learned Additional Public Prosecutor submitted that the investigation agency has complied the provisions of Sections 42 and 50 of the NDPS Act and the same was rightly observed by the trial Court. He further submitted that the ganja seized is commercial quantity; therefore, the petitioners are not entitled for bail in view of Section 37 of the NDPS Act.

4. The case of the prosecution is that on 18.04.2017 on receiving reliable information, the police conducted vehicle check at Lakkavaram Y-Junction, Chinturu Mandal, East Godavari

District. They intercepted the Car bearing No. TS 08 EQ 8299 and seized 100 kgs. of ganja in five gunny bags. Three persons, who were in the vehicle, tried to abscond. It is the further case of the prosecution that the police detained those three persons, who disclosed their identity i.e., accused Nos.1 to 3. After following due procedure, the police registered a case in Crime No.15 of 2017 for the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the NDPS Act. The petitioners and accused No.2 were remanded to judicial custody on the same day.

5. A perusal of the record reveals that the investigation agency has obtained permission from the S.D.P.O. before proceeding to the spot. A perusal of the record *prima facie* reveals that the concerned officials informed the petitioners about their right to be searched in the presence of Magistrate or Gazetted Officer. The record further reveals that the ganja was seized on account of personal search of the accused. A perusal of the record clearly reveals that the police seized 100 kgs. of ganja from the possession of the petitioners and accused No.2.

6. In order to appreciate the contentions of learned counsel for the petitioners, this court is placing reliance on the following decisions:

(i) In **State of M.P. v. Kajad**¹, the Hon'ble apex Court held at paragraph No.5 as follows:

5. ... The purpose for which the Act was enacted and the menace of drug trafficking which it 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 an

¹ (2001) 7 SCC 673

exception under sub-clause (i) 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 offence while on bail. It has 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.

(ii) In **Collector of Customs v. Ahmadalieva Nodira**², the Hon'ble apex Court held at paragraph No.7 as follows:

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: 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. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires **existence** of such facts and circumstances as are **sufficient** in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(iii) The Hon'ble apex Court reiterated the same principle in **Union of India v Sanjeev V. Deshpande**³.

As per the principle enunciated in the cases cited supra, the court can grant bail to the persons involved in the cases under the NDPS Act, if it satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if the accused is released on bail, he will not involve in similar type of offences.

² (2004) 3 SCC 549

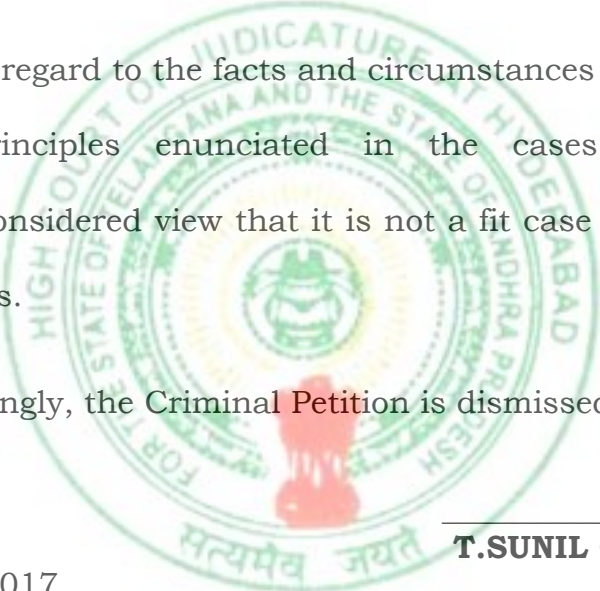
³ (2014) 13 SCC 1

7. In the instant case, the Police officials caught hold the petitioners while they were transporting 100 Kgs of ganja, which is a commercial quantity, from the State of Andhra Pradesh to the State of Telangana. The material placed before the court is *prima facie* sufficient to arrive at a conclusion that the petitioners have committed the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the NDPS Act. If the petitioners are released on bail, the possibility of involving in similar type of cases cannot be ruled out. Moreover, the learned Additional Public Prosecutor submitted that the investigation is in progress.

8. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that it is not a fit case to grant bail to the petitioners.

9. Accordingly, the Criminal Petition is dismissed.

Date: 16.08.2017
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**T.SUNIL CHOWDARY, J**