

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 1176 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-1 on bail in Crime No.2 of 2016 of Jaggampeta Police Station, East Godavari District for the offence under Section 8 (c) read with 20 (B) (1) (c) of N.D.P.S Act, 1985 who is in judicial custody since 04.01.2016.

2. The case of the prosecution is that the Sub-Inspector of Police, Jaggampeta Police Station on receipt of credible information about transportation of ganja, proceeded to Ananthalashmi Engineering Works outskirts of Ramavaram village, Jaggampeta mandal on 03.01.2016 at about 4 p.m. at NH-16 road and found van bearing No. AP20YO129 came from Visahapatnam side from which A-1,A3 and A-4 got down and tried to fled away, then the police could apprehend them and detained them, searched the van and found 240 kgs of ganja in the van kept in covers and that the police lifted the samaples of ganja for chemical analysis and seized the contraband under cover of mediators' report and on the strength of the mediators' report, a crime was registered and remanded the accused to judicial custody.

3. The present petition is filed mainly on the ground that there is a discrepancy in the statement of LW-2 (Smt.LShivamma), Tahsildar regarding the receipt of information about the search to be conducted and whereas the mediators' report shows that the search was commenced even prior to service of notice on Tahsildar. So, the search was commenced about one hour prior to service of notice on Tahsildar and drawn the attention of this Court.

4. Therefore, there is any amount of discrepancy about the presence of LW-2 Tahsildar at the time of search and the discrepancy is not explained. So, the petitioner is entitled to get an acquittal even after full-fledged trial. Therefore, in view of the discrepancy, the petitioner sought bail.

5. During the course of hearing, the learned counsel for the petitioner drawn the attention of this Court to the contents of the mediators' report and the statement of LW-2 Tahsildar by name LShivamma and according to the report at about 4 p.m. on 03.01.2016 they conducted search of the vehicle bearing No. AP20YO129 Tata Motor Company at a distance of 10 metres near 2 km milestone on NH-16 and conducted search. Whereas, in the statement of LW-2 LShivamma, she stated that on 03.01.2016 at about 7 p.m. the Sub-Inspector of Police, Jaggampeta through his constable sent a requisition to her. Thus, there is any amount of discrepancy regarding the time for commencement of search and the presence of LW-2 LShivamma can be ruled out based on her statement recorded by the police under Section 161 Cr.P.C.

6. On the strength of this allegation, the learned counsel for the petitioner would contend that even-after trial, the petitioner would be entitled to acquittal. Therefore, confinement of the petitioner in jail as pre-trial detenu amounts to violation of fundamental rights guaranteed under Article 21 of the Constitution of India and prayed to enlarge the petitioner on bail.

7. Per contra, the learned Additional Public Prosecutor contend that the petitioner earlier filed three bail applications in CrI.P.Nos.9947 of 2016, 12556 of 2016 and 17047 of 2016 were ended in dismissal by orders dt.18.07.2016, 3-0.08.2016 and 23.12.2016 respectively and after dismissal of the earlier bail applications, there are no major changed

circumstances in investigation. In the absence of changed circumstances, the petitioner is not entitled to renew his request for bail and such practice is void and he prayed for dismissal of bail petition.

8. In view of the specific contention raised by the Public Prosecutor, I directed the registry to put up the earlier three bail applications referred above. In fact, the charge sheet was filed on 03.06.2016. After filing charge sheet, the petitioner filed three bail applications in CrI.P.Nos.9947 of 2016, 12556 of 2016 and 17047 of 2016 were ended in dismissal by orders dt.18.07.2016, 3-08.2016 and 23.12.2016 respectively. In CrI.P.No.12556 of 2016 he raised several contentions with regard to search and seizure. In CrI.P.No.17047 of 2016 the counsel for the petitioner raised a specific ground. The contention in para 12 of the petition regarding the discrepancy between the statement of LW-2 LShivamma and the mediators' report about commencement of search and it is as follows:

"It is further submitted that the LW-2 i.e. the Tahsildar Jaggampeta in N.D.P.S S.C.No.138 of 2016 categorically stated that she received requisition from the respondent police to act as search office at 7.00 p.m. on the even date of 03.01.2016. Whereas the mediators report that was drafted in the presence of mediators 4 and 5 clearly discloses that the drafting of mediators report was started at 6.00 p.m. on 03.01.2016 and completed by 7.30 p.m. on dt.03.01.2016. Hence, there is a discrepancy with regard to drafting of mediators report and search and seizure in the presence of LW-2 i.e. Tahsildar, Jaggampeta."

9. Despite raising such contention, this Court by order dated 23.12.2016 dismissed the bail petition. This Court declined to grant bail on the ground that huge quantity of ganja weighing about 240 kgs in 12

bags in TATA model van bearing No. A P-20-Y-0129, Section 37 of Narcotic Drugs and Psychotropic Substances Act, comes into play.

10. The endeavour of the learned counsel for the petitioner is that when the court did not consider the specific finding with regard to discrepancy, the petitioner is entitled to raise a similar ground and seek bail under Section 439 Cr.P.C. Undoubtedly, the petitioner raised an identical ground in an earlier bail application in Cr.P.No.17047 of 2016 which I extracted above and this contention was raised only after filing charge sheet specifically pointing out the discrepancy, however, this Court did not accept the contention and declined to grant bail to the petitioner though no finding was specifically recorded. It is an implied consideration of such discrepancy. Therefore, such ground cannot be said to be a major changed circumstance subsequent to dismissal of earlier bail application. When once the petitioner raises such contention and dismissed the petition, there must be some substantial ground which was not brought to the notice of the Court or major changed circumstances to consider the request of the counsel for the petitioner to grant bail to the petitioner is one such ground for bail and denying bail, this Court is precluded from considering the request to grant the bail.

11. Similar issue came up before the Apex Court in *State of Tamil Nadu v. S.A. Raja*¹ where the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated

¹ (2005) 8 Supreme Court Cases 380

filing of the bail applications without there being any change of circumstances would lead to bad precedents. Therefore, on this ground also, the petitioner is not entitled to claim bail.

12. In view of the principles laid down in the above two judgments, unless there are major changed circumstances, the Court cannot consider the request of the petitioner for grant of bail.

13. The learned counsel for the petitioner has drawn the attention of this Court to a judgment reported in *SARIJA BANU (A) JANARTHANI ALIAS JANANI AND ANOTHER v. STATE THROUGH INSPECTOR OF POLICE*² in para 7, the Supreme Court while dealing with Section 42 of N.D.P.S. Act held as follows:

“It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of S.42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of S.42, and it is observed that it was not necessary to consider such violation at this stage. The compliance of S.42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.”

14. The learned counsel for the petitioner contended that though such ground is raised regarding the violation of Section 42 of the Act, this Court did not consider the effect of non-violation of Section 42 of the Act.

15. Violation of Section 42 of the Act vitiates the entire proceeding and on that ground the petitioner is entitled for grant of bail. But, here that is not the question. This Court need not consider such violation when the petitioner raises a specific ground with regard to discrepancy in the earlier

² 2004 AIR SCW 7488

bail applications and all other grounds and invited an order of dismissal in bail applications in CrI.P.Nos.9947 of 2016, 12556 of 2016 and 17047 of 2016 which were ended in dismissal by orders dt.18.07.2016, 30.08.2016 and 23.12.2016 respectively, unless the petitioner show major changed circumstances, this court cannot grant bail to the petitioner on the same ground which he raised in the earlier bail applications.

16. Therefore, the principle laid down in the above judgment is not relevant to decide the issue regarding the reconsideration of the fresh bail application without changed circumstances and that may be relevant when there is a clear violation but on the sole ground that there are no changed grounds for dismissal of the earlier bail applications, this petition cannot be allowed.

17. In view of the law declared by the Apex Court in *State of Tamil Nadu v. S.A. Raja and Kalyan Chandra Sarkar v. Rajesh Ranjan @Pappu Yadav* (cited supra), I find that there are no grounds to enlarge the petitioner on bail in view of the dismissal of earlier bail petitions, mostly on the same and identical ground.

18. For the foregoing reasons, the criminal petition is liable to be dismissed.

19. Accordingly, the criminal petition is dismissed. Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

20. At the end of the dictation, the learned counsel for the petitioner seeks time for disposal of the sessions case by the Special Court as the petitioner is in jail since long time i.e. 03.01.2016.

21. Acceding to the request of the learned counsel for the petitioner, I deem it appropriate to direct the Additional District and Sessions Judge, East Godavari at Rajahmundry to dispose of the sessions case in

accordance with law within three months from the date of receipt of a copy of this order.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.03.2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.1176 OF 2017

Date:15.03.2017

ccm