

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3136 of 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of the Criminal Procedure of Code, by the petitioner, accused in Crime No.141 of 2016 of Gollaprolu Police Station, East Godavari District, registered for the offences under Sections 8 (c) r/w.20(b)(ii)(c) of the NDPS Act, to enlarge him on bail. The petitioner is in judicial custody since 26.09.2016.

On 26.09.2016 at about 12.30 p.m., the Sub-Inspector of Police received credible information about a stationed vehicle i.e. Toyota Car bearing No.TN 10 AR 7873 under a tamarind tree near Nookalamma Temple at the outskirts of Chendurthi village of Gollaprolu Mandal, under suspicious circumstances. The Sub-Inspector of Police, with his available staff, went there and checked the vehicle and found some ammonia bags kept in the rear seat of the car and informed the same to the Inspector of Police, Pithapuram Circle and in the presence of mediators and gazetted officer they opened the door and dickey of the car and found 154 kgs., of ganja and seized the same. Later, on 26.10.2016, after identifying the person to whom the vehicle belongs, at about 6.00 p.m., the police arrested the petitioner and found 4.00 kgs., of ganja in his possession, and they immediately arrested the petitioner under the cover of panchanama and seized the 4 kgs., of ganja from his possession. Thus, the petitioner was found transporting the commercial quantity of ganja i.e.154 kgs., in the Toyoto car and thus committed an offence. On the strength of the mediators report, the police registered the crime.

The contention of the petitioner before this Court is that he was not found in the car at the time of search conducted by the police and based on the confession and the mediators report, the police arrested the petitioner and they found only 4.00 kgs., of ganja in the possession of the petitioner, thereby the bar under Section 37 of the NDPS Act has no application and the confession of the petitioner itself is not sufficient to prove the offence as it is inadmissible in the evidence under the provisions of the Indian Evidence Act.

The learned Public Prosecutor opposed the petition on the ground that 154 kgs. of ganja was found transporting in the car referred supra, which is commercial quantity and the petitioner is the owner of the vehicle therefore, he cannot be enlarged on bail in view of the law declared in State of Madhya Pradesh v. Kajad¹ and prayed for dismissal of the petition.

As seen from the allegations made in the mediators report initially the police found of 154 kgs., of ganja transporting in the car which was parked under a Tamarind tree and they seized the same, after conducting search. Undisputedly, the petitioner is the owner of the car and when his car was found carrying ganja, he is alone responsible. Seizure of 4.00 kgs., of ganja after two days from the possession of the petitioner is a different case and they would attract the offence punishable under Section 8(c) r/w.20(b) of the NDPS Act. Therefore, finding of 4.00 kgs., of ganja in the possession of the petitioner alone cannot be taken into consideration as the car of the petitioner was found transporting 154 kgs., of ganja, on the other hand, the petitioner himself made confession before the mediators. This confession is covered Section 67 of the NDPS Act and on the basis of such confession,

¹ 1 AIR 2001 SC 3317

arrest of the petitioner cannot be found fault unless it is proved that it is obtained under threat and coercion, as held by the Apex Court in *Kanhaiyalal v. Union of India*². Undisputedly, the petitioner is the owner of the vehicle which is found carrying 154 kgs., of ganja, which is commercial quantity and in such case, Section 37 of the NDPS Act created interdict to grant bail to the petitioner unless the Court comes to a conclusion that the petitioner did commit no offence and that he will not commit similar offence while on bail.

It is brought to the notice of this Court that the petitioner involved in two other crimes i.e. Crime No.12 of 2014 of Polgunta Police Station and Crime No.103 of 2016 of Annavaram Police Station, for the offences punishable under the provisions of NDPS Act. Therefore, it is difficult for this Court to conclude that the petitioner will not commit similar offence in view of the criminal background involved in two crimes for the offences punishable under the provisions of the NDPS Act. It is also brought to the notice of this Court that the charge sheet is filed in the present case. But, that is not a ground to grant bail to the petitioner in view of the bar under Section 37 of the NDPS Act.

In view of the law declared by the Apex Court in the *Kajad's* case (supra 1), it is difficult for me to enlarge the petitioner on bail. Hence, the petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

April 28, 2017.
KTL

² 2008(1) ALD CrI.899