

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.119 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/ A.5 in Cr.No.77 of 2016 of Puttaparthi Urban Police Station, Puttaparthi, who allegedly committed the offences punishable under Section 20 (b) and 2 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

The case of the prosecution is that on 08.11.2016 at about 10.00 a.m. the police inspected the shed of A.1 and A.2 and found huge quantity of ganja i.e. 200 kgs., besides other items viz., tobacco powder, betel nuts, Magnesium Carbonate, Kimam Oil, Menthol , perfume oil and Peraphin oil. On interrogation A.1 and A.2 disclosed that they along with others started manufacturing of gutka mixing ganja, as they sustained huge loss in the ground nut business, their confessional statement was recorded and on the strength of the same, the police registered crime and issued F.I.R. against all the persons including the petitioner.

The main contention of the petitioner before this court is that he was falsely implicated at the instance of A.1 and A.2 and there is no material that he was involved in the commission of the offence.

The Public Prosecutor for the State of Andhra Pradesh has contended that the quantum of ganja seized from the accused

persons is commercial quantity as per the Schedule of the NDPS Act. In such a case, the petitioner is not entitled to claim bail as a matter of right in view of interdict contained under Section 37 of the NDPS Act.

No doubt, except confessional statement of A.1 and A.2, there is no material on record. The investigation is not yet completed as on today and hence grant of pre-arrest bail in a case where the commercial quantity is involved is difficult in view of interdict contained under Section 37(1) (b) of the NDPS Act, that unless the court records its satisfaction that the petitioner did commit no offence and that he would not commit similar offence while on bail, the court cannot grant regular bail under Section 439 Cr.P.C. in serious offences like the offence punishable under Section 20(b) read with 2(b) of the NDPS Act. But the petitioner apprehending his arrest in connection with the above crime. However there is possibility of interfering with the investigation in the event of enlarging the petitioner on bail.

In **STATE OF MADHYA PRADESH v. KAJAD**¹ the Apex Court specifically 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

¹ AIR 2001 SC 3317

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 the present case, the petitioner is not claiming regular bail, but a pre-arrest bail. Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioners have shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in **STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN²**. Wherein the Apex Court laid down the following guidelines for grant of anticipatory bail:

- 1.The nature and gravity or seriousness of accusation as apprehended by the applicant;
- 2.The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;
- 3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and
- 4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.

Similarly, in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS³**, the Apex Court held as follows:

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

² AIR 2008 SC 155

³ 2011 Cr.L.J. 3905

- 4 -

- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accuser's likelihood to repeat similar or the other offences;
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In view of specific guidelines laid down by the Apex Court and taking into consideration the gravity of the offence allegedly committed by the petitioner along with other accused and principle laid down by the Apex Court in **Kajad's** case , it is difficult for me to grant pre-arrest bail at

- 5 -

this stage. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY,J

January 25, 2017
BV

