

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.864 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioner in Crime No.430 of 2016-17 of Paderu Prohibition and Excise Station, Visakhapatnam 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 Act').

2. The case of the prosecution, in brief, is that on 12.12.2016 at about 05.00 PM while conducting check by the Prohibition and Excise Inspector, P&ESI, Enforcement Wing, Visakhapatnam along with staff and mediators detected a case at Vanjangi Kanthamma View Point Limits of Paderu Mandal and found the petitioner having illegal possession and transportation of dry Ganja on motor cycle Honda Unicorn bearing No. AP 31 AS 8379. On seeing excise officials, the petitioner stopped the motor cycle at a distance of 100 meters and tried to run away. Thereupon, the police apprehended the petitioner and seized Ganja in the presence of mediators weighing about 27 kgs under cover of panchanama and lifted the sample as per procedure.

3. The main contention of the petitioner is that he is an old man aged 60 years and is undergoing treatment for heart enlargement and produced medical certificate issued by Queen's NRI Hospital on 03.05.2016 and that the quantum of

Ganja seized is not 27 kgs, but for statistical purpose, the investigating agency mentioned as 27 kgs in the mediators report and that he went into coma for a week and the jail authorities got treated him for the said problem.

4. Learned Additional Public Prosecutor representing the State would contend that the petitioner filed a similar petition being CrI.P.No.235 of 2017 before this Court and the same was ended in dismissal by order dated 11.01.2017 and thereafter, there was no changed circumstances and that unless there are changed circumstances, the petitioner cannot be enlarged on bail since the quantity involved is a commercial quantity.

5. No doubt, the petitioner is aged 60 years as per FIR and he was allegedly found in possession of Ganja, which is a psychotropic substance, weighing about 27 kgs and transporting the same on a motor cycle referred supra.

6. The contention of the learned counsel for the petitioner is that the quantity was shown as 27 kgs to see that the petitioner shall not be enlarged on bail, which is not acceptable at this stage for considering the bail application. He further contended that the petitioner is suffering from severe cardiac problem i.e. concentric LVH and produced the medical report dated 03.05.2016, 06.10.2016 and 14.11.2016. All these documents would show that the petitioner suffered from ill-health, but still able to transport Ganja on the motor cycle referred supra. At para 7 of the order dated 11.01.2017 in

CrI.P.No.235 of 2017, this Court considered about the old age and ailments which the petitioner suffered, but declined to grant bail. In any view of the matter, the quantity involved in the offence is 27 kgs of Ganja, which is a commercial quantity, and the punishment for the offence punishable under Section 20(b)(ii)(c) is 10 years.

7. According to the decision of the Apex Court in **State of Madhya Pradesh v Kajad**¹ when a person, who indulged in an offence punishable for more than five years of imprisonment under the provisions of the Act, cannot be released generally on bail. The Supreme Court in para 5 of the said judgment discussed the scope of Section 37 of the Act and concluded that the purpose for which the 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. It is further to be noticed that the conditions for granting bail,

¹ 2001(7) SCC 673

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.

8. In view of the law declared by the Apex Court and applying the principle laid down in the above judgment as the quantity involved is 27 kgs, which is in contravention of Section 8(c) of the Act and the punishment is more than five years, I find no ground to enlarge the petitioner on bail.

9. In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

13.02.2017
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