

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6293 of 2017

ORDER:

This criminal petition is filed, by the petitioners-accused Nos.1 and 2, under Sections 437 and 439 Cr.P.C., seeking bail in Crime No.141 of 2017 on the file of the Station House Officer, Paloncha Town Police Station, registered for the offences punishable under Sections 8(c) read with 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The learned counsel for the petitioners strenuously submitted that the investigation is almost completed and even if the petitioners are released on bail, there is no chance of tampering with the investigation. He further submitted that the petitioners were falsely implicated, in this case, by the Paloncha Forest officials; therefore, it is a fit case to grant bail to the petitioners. ***Per contra***, learned Additional Public Prosecutor representing the State submitted that the Forest officials seized 208 Kgs of Ganja (commercial quantity) from the possession of the petitioners and the investigation is in progress. He further submitted that the petitioners belong to Odisha State and if they are released on bail, there is no chance to secure their presence; therefore, it is not a fit case to grant bail to the petitioners.

3. The facts leading to filing of the present petition are briefly as follows: On 26.3.2017, one Manda Jaya Kantha Rao, Forest Section Officer, Paloncha, submitted a written complaint to the Station House Officer, Paloncha Town Police Station, who in turn registered a case in Crime No.141 of 2017 for the offences

punishable under Section 8(c) read with 20(B) of the NDPS Act. It is the case of the prosecution that when Paloncha Forest officials were checking the vehicles at the check-post, they found an un-registered white colour Mahindra Bolero car. On suspicious, they inspected the vehicle and found 208 Kgs of Dry Ganja. After completion of necessary formalities, the Forest officials seized the Ganja and handed over the same to the Station House Officer, Paloncha Town Police Station. The petitioners were arrested on 26.3.2017 and remanded to judicial custody on the same day.

4. 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 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 at paragraph No.7 as follows:

¹ (2001) 7 SCC 673

² (2004) 3 SCC 549

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. Deshpande³.

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.

5. In the instant case, the Police officials caught hold the petitioners while they were transporting 208 Kgs of Dry Ganja, which is a commercial quantity. The material placed before the court is *prima facie* sufficient to arrive at a conclusion that the petitioners have committed the offence punishable under Sections 8(c) read with 20(B) of the NDPS Act. If the petitioners are released on bail, the possibility of involving in similar type of cases cannot be ruled out completely. Moreover, the learned Additional Public Prosecutor submitted that the investigation is in progress.

³ (2014) 13 SCC 1

6. Having regard to the facts and circumstances of the case and also the principle 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.

7. Hence, the criminal petition is dismissed.

T.SUNIL CHOWDARY, J

August 01, 2017
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