

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.70 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/Accused on bail in Cr.No. 54 of 2016-17 of Prohibition & Excise, V.Madugula, who allegedly committed the offences punishable under Sections 8(c) read with 20(b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

The case of the prosecution, in brief, is that on 07.11.2016 the Prohibition & Excise officials including Inspector of Police, on receipt of information, secured the presence of mediators, rided the house of the petitioner and found 180 kgs., of dry ganja in 9 brown colour packets, each packet contains 20 kgs., of dry ganja and in the presence of mediators, the said ganja was seized under the cover of panchanama dated 07.11.2016 duly signed by the mediators and Prohibition & Excise officials, lifted the samples in the presence of mediators as per the procedure. On the strength of the mediators report, the Prohibition & Excise police registered the crime and issued F.I.R.

The present petition is filed under Sections 437 and 439 of Cr.P.C. contending that requirements under Sections 42(2) and 41(2) of the NDPS Act are not complied with as the prohibition & Excise Inspector did not issue any notice securing the presence of any independent mediators of the locality to conduct search in their presence.

As seen from the material on record, the entry was made subsequent to conducting search i.e. 10.50 p.m. on 07.11.2016 though search was conducted about 4.00 p.m. and such margin is permissible in view of the principle laid down by the Constitutional Bench of the Apex Court in **Karnail Singh v. State of Haryana**¹. Similarly when search was not conducted by a gazetted officer, insistence of compliance of requirement under Section 42(2) of the NDPS Act does not arise in view of the principle laid down by the Apex Court in **G. Srinivas Goud v. State of A.P.**² Thus the alleged non compliance of Sections 41(2) and 42(2) of the NDPS Act is of no avail to the petitioner, at this stage, in view of the law declared by the Apex Court in the judgments referred to supra.

The other contention of the counsel for the petitioner is that the petitioner is in judicial custody since 07.11.2016 and that long period of incarceration in jail would defeat the right of fair trial. Therefore, sought for enlarging the petitioner on bail. But long time pre-trial detention in jail is not a ground to enlarge the petitioner on bail in view of the principle laid down by the Apex Court in **Chenna Boyanna Krishna Yadav -vs- State of Maharashtra and another**³.

As seen from the material on record, the total quantum of ganja involved in this case is 180 kgs., which is a commercial quantity and it is an offence punishable with imprisonment for more than 5 years. Hence, Section 37 of the NDPS Act would come into play.

¹ (2009) 3 SCC (Cri) 887

² (2005) 8 Supreme Court Cases 183

³ (2007) 1 SCC 242

In **State of Madhya Pradesh v. Kajad**⁴ the Apex Court 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 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 **Maktool Singh v. State of Punjab**⁵ the Apex Court held that for all the offences punishable more than five years, the Courts power to release the accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

In **Customs, New Delhi v. Ahmadalieva Nodira**⁶ held that the Court has to keep in mind two conditions i.e., 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

⁴ AIR 2001 SC 3317

⁵ (1999) 3 SCC 321

⁶ 2004 (1) JCC 662

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 and the expression reasonable grounds means something more than prima facie grounds and it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences.

In view of the law declared by the Apex Court in the judgments referred to supra, unless the Court concludes that the accused is not guilty based on reasonable ground and that there is no possibility of committing similar offences while on bail, where the offences are punishable with more than five years, he shall be enlarged on bail. Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Sections 437, 438 & 439 are applicable. Besides the application of general provisions of Cr.P.C, certain safeguards are provided in the Act to grant bail, while placing reversal burden in view of Section 35 & 54 of NDPS Act. Therefore, the general principles governing bails under Section 437, 438 & 439 are equally applicable to the bail applications filed for the offences punishable under Sections 8(C) read with Section 20(b)(ii)(C) of the NDPS Act for enlarging the accused in the above crimes under NDPS Act, where commercial quantity is involved.

The normal principle is that, unless the Court comes to a conclusion that there are no reasonable grounds that the petitioner/accused did commit no offence and that there is no apprehension of interference in case the petitioner is enlarged on bail, the Court can enlarge the accused on bail, here the material

- 5 -

prima facie lead me to conclude that the petitioner committed the offence.

Thus in view of the principles laid down by the Apex Court, the petitioner is disentitled to claim bail as the offence allegedly committed by the petitioner punishable with imprisonment for more than 5 years. Hence, I find no ground to enlarge the petitioner on bail. Consequently, the criminal petition is liable to be dismissed in view of the principle laid down by the Apex Court in **State of Maharashtra v. Kajad** referred to supra.

In the result, the criminal petition is dismissed.

Date:14.02.2017
BV

M. SATYANARAYANA MURTHY, J

