

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.1082 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioner/A3 on bail, who is in judicial custody since 03.03.2016 in connection with Crime No.39 of 2016 of Mangalagiri (T), registered for the offences punishable under Section 8(c) read with Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

The case of the prosecution, in brief, is that on 03.03.2016, the Inspector of Police, Mangalagiri Town Police Station while conducting vehicle check along with his staff at Flyover in Mangalagiri By pass road, Tenali Junction from Vijayawada to Guntur National High Way Road, found a lorry bearing No. AP. 37 TB 2970 proceeding from Vijayawada side to Guntur, stopped the vehicle and on thorough search, found 895 kgs of Ganja. Thus, the petitioner along with three others were transporting Ganja in the lorry, which is an offence punishable under the above Act.

Learned counsel for the petitioner would contend that the petitioner is in jail since 03.03.2016 and suffering from ill-health due to earlier surgery for hernia and again the petitioner has to undergo surgery and therefore, prayed to enlarge the petitioner on bail as he was only a passenger in the goods vehicle at the time of conducting search and seizure of the contraband.

As per the material available on record, the petitioner was admittedly travelling in the lorry at the time of search and seizure. But the contention of the learned counsel for the petitioner is that

he was only fare paid passenger, travelling in the goods vehicle along with others. But nothing is produced before the Court to prove that he was travelling as a passenger in the goods vehicle i.e. lorry. However, the petitioner was admittedly in the lorry at the time of seizure. Till it is proved that he is travelling as a passenger in the lorry i.e goods vehicle, he deemed to have been travelling in the lorry as owner of the goods. In such a case, the petitioner cannot contend that he is a fare paid passenger to grant bail to him. On the other hand, it is fairly contended that he is suffering from ill-health and requires surgery for hernia. This contention is not substantiated by any piece of evidence.

Bare look at the material available on record, the petitioner was present, transporting Ganja along with other persons, illegally on the date of incident without any license or authorisation from the competent authority. As the petitioner was travelling with goods in the lorry, the police took him into custody, as he controverted Section 8(c) of the Act punishable under Section 20(b)(ii)(c) of the Act. Section 8 of the Act deals with prohibition of certain operations and no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation. Thus, possessing Ganja by any person without any license or

authorisation obtained from the concerned authorities *prima facie* is an offence under Section 8(c) of the Act. *Prima facie* transporting Ganja is more than commercial quantity, the Court cannot enlarge him on bail, which is 895 kgs and thereby Section 37 of the Act is applicable. Unless the Court finds that he is not a person, who was transporting Ganja of more than commercial quantity and the punishment prescribed for such offence is five years and thereby, the petitioner is not entitled for bail.

Moreover, in **State of Madhya Pradesh v Kajad**¹ the Apex Court held that 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 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 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 subsection (1) of Section 37 are in addition to the limitations provided

¹ 2001(7) SCC 673

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.

In view of law declared by the Apex Court and applying principle in the above judgment as the quantity involved is 895 kgs and the provisions under Section 8(c) of the Act, I find no grounds to enlarge the petitioner on bail.

The criminal petition is accordingly dismissed.

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

17.02.2017
kvrn



M.SATYANARAYANA MURTHY,J