

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1781 of 2017

ORDER:

This petition is filed under Sections 437 and 439 of Criminal Procedure Code (for short "Cr.P.C.") by accused Nos.1 and 2 in Crime No.08 of 2017 of Makavarapalem Police Station, Visakhapatnam District registered for the offences punishable under Sections 20 (b) (ii) (c) and Section 23 read with 8 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"), to enlarge them on bail in connection with the above crime as they are in judicial custody since 04-02-2017.

The case of the prosecution, in brief, is that on 04-02-2017 at 6.00 hours near Rachapalli junction, on receipt of credible information, the Inspector of Police along with his staff P.C.No.2052, H.C.No.631 and A.S.I.No.785 of Makavarapalem Police Station, along with two mediators visited the place. At that time, police intercepted one car coming from Narsipatnam side and proceeding towards Thallapalem and on seeing police they left the vehicle and five persons including driver got down from the car and tried to abscond. Police apprehended A-1 and A-2 and seized 40 pockets of dry Ganja from the vehicle, which consists of Ganja leaves, flowers, buds and stems and the total weight of Ganja is about 80 Kgs., and police seized the contraband

after drawing samples therefrom under the cover of mediators report and arrested the accused, remanded them to judicial custody.

Learned counsel for the petitioners contended that the petitioners did commit no offence and they were falsely implicated by the police.

Learned Public Prosecutor (State of Andhra Pradesh) would contend that the material on record is suffice to conclude that the petitioners committed offence punishable under Sections 20 (b) (ii) (c) and 25 read with 8(C) of the NDPS Act and found transporting commercial quantity of Ganja, therefore, in view of the embargo contained in Section 37 of NDPS Act the petitioner is not entitled to claim bail as of right in view of the law declared in “***State of Madhya Pradesh v. Kajad***¹” “***Maktool Singh v. State of Punjab***²” and “***Customs, New Delhi v. Ahmadalieva Nodira***³”

When the petitioners are accused of an offence punishable under Sections 20 (b) (ii) (c) and 25 read with 8(C) of the NDPS Act and the learned Public Prosecutor opposed the bail application, unless the Court recorded a finding that there is a reasonable ground to conclude that the petitioners did commit no offence and there is no possibility of

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

committing similar offence while the petitioners are on bail, the petitioners cannot be enlarged on bail.

In the present case, the petitioners were read handedly caught by the police while they are transporting 80 Kgs., of Ganja and arrested them. Now, they are denying the same and material on record clearly show that the petitioners found transporting contraband. In such case, it is difficult to record the satisfaction of the Court as required under Section 37 of NDPS Act that there is no possibility of committing similar offence while the petitioner is on bail to grant bail to the petitioners.

The material on record would *prima facie* establish that the petitioners committed offence punishable under Sections 20 (b) (ii) (c) and 25 read with 8 (C) of the NDPS Act.

In this connection, learned Public Prosecutor for the State of Andhra Pradesh relied on the judgment of Apex Court rendered in “**State of Madhya Pradesh v. Kajad**”, (referred supra) wherein 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**” (referred supra) the Supreme 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**” (referred supra) 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 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.

Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Section 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 NDPS Act for enlarging the accused in the crimes under NDPS Act, where commercial quantity is involved.

In view of the law declared in the above judgments and the material on record, the petitioners were found transporting 80 Kgs of Ganja i.e., commercial quantity and the offences allegedly committed by the petitioners are punishable under Sections 20 (b) (ii) (C) and 25 read with 8 (C) of N.D.P.S. Act. Hence, I find no ground to enlarge the petitioners on bail. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

April 26, 2017

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