

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.441 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioner/A1 on bail, who is in judicial custody since 14.09.2016 in connection with Crime No.56 of 2017 of Chinturu Police Station, East Godavari District, registered for the offences punishable under Section 8(c) read with Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

The case of the prosecution, in brief, is that on 13.08.2016 the Forest Section Officer, Murumuru Section, Kunavaram Range, Chintoor Division went to the Inspector of Police, Chintoor and presented a written report to the effect that on 13.08.2016 at about 06.30 AM opposite to Chatti Way Bridge, when he engaged a vehicle for checking with his helper to prevent illicit transportation of wood, one silver colour car came near to the check post and some persons, who were in the car having seen them, turned the said car and tried to drove away. Thereupon, he followed the said vehicle with his helper and stopped the said car near Chatti Y Junction and that the driver of the car and another person, aged about 30 to 35 years, stopped the car and ran away. When they searched the said car, they found two gunny bags containing Ganja in the rear seat and two other gunny bags containing Ganja in dickey. When the said incident was informed to the superior officer, he ordered to present written report to the concerned police and as such, he informed the same to the concerned police. On the strength of the report of the

Forest Officer, the police registered the above crime and took up investigation. The total Ganga seized from the said car is 210 kgs.

It is the contention of the learned counsel for the petitioner that the petitioner was not found at the scene of offence and even if according to the report, he skulk away and when he came back for enquiry about the car, on suspicion he was caught and except that nothing has been seized from the petitioner and hence, he is entitled for bail.

Bare look at the material available on record, two persons, who were travelling in the car, aged about 30 to 35 years stopped the car and ran away and that the petitioner was identified as one among them when he came back and enquired about the car. Therefore, he was present, transporting Ganga along with another person, illegally on the date of incident without any license or authorisation from the competent authority. Basing on the conduct of the petitioner, the police took him into custody, otherwise, there is no need for the petitioner to enquire about the car and it amounts to contravention of 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, which is 210 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 sub-

¹ 2001(7) SCC 673

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.

In view of law declared by the Apex Court and applying principle in the above judgment as the quantity involved is 210 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.

27.01.2017
kvrm



M.SATYANARAYANA MURTHY,J