

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2516 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 by the petitioner/ Accused to enlarge him on bail in S.C. No.143 of 2016 on the file of I Additional District and Sessions Judge, East Godavari at Rajahmundry, (Crime No.47 of 2016 of Kotananduru Police Station, East Godavari District, registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). He is in judicial custody since 09.06.2016.

The case of the prosecution, in brief, is that on 08.06.2016 on receipt of reliable information from the Sub-Inspector of Police, the Circle Inspector of Police called the mediators and trapped the petitioners while they are transporting ganja in a vehicle TATA Magic bearing No.31 TV 8751 which is proceeding from Narsipatnam to Tuni and when they have stopped the vehicle, the petitioners tried to skulk away, but the police apprehended them with the help of staff and found they are in possession of 280 kgs. of ganja, which was found in 14 plastic gunny bags, each gunny bag containing 10 packets and each packet contained 2 kgs., of ganja and after following necessary procedure, lifted the samples and seized the contra band under the cover of panchanama and produced the petitioners after arrest before the court on 09.06.2016.

The main contention of the counsel for the petitioners is that the petitioners are falsely implicated due to enmity in the Village, they did commit no offence, and prayed to enlarge the petitioners on bail.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that huge quantity of ganja i.e. commercial quantity was seized from the petitioners, it is an offence punishable under Section 8(c) read with 20(b) (ii)(c) of the NDPS Act and such persons cannot be enlarged on bail and placed reliance on the Judgment of the Apex Court in **State of Madhya Pradesh V. Kajad**¹.

As seen from the material on record, the total quantum of ganja involved in this case is 280 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.

In **State of Madhya Pradesh v. Kajad** referred above 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.

¹ AIR 2001 SC 3317

In **Maktool Singh v. State of Punjab**² 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**³ the Apex Court 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.

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

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

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 *prima facie* leads me to conclude that the petitioners 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 petitioners punishable with imprisonment for more than 5 years. Hence, I find no ground to enlarge the petitioners 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 above.

The other contention of the counsel for the petitioners is that the petitioners are in judicial custody since 09.06.2016 and that long period of incarceration in jail would defeat the right of fair trial. Therefore, sought for enlarging the petitioners on bail.

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

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Chenna Boyanna Krishna Yadav v. State of Maharashtra and another⁴. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

11.04.2017
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⁴ (2007) 1 SCC 242