

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2901 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 petitioners/A.4 and A.5 to enlarge them on bail in Crime No.35 of 2017 of Rajanagaram Police Station, East Godavari District, registered for the offence 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'). They are in judicial custody since 24.02.2017.

The case of the prosecution, in brief, is that one K.Vara Prasad, Inspector of Police, Rajanagaram, on receipt of credible information on 24.02.2017 at about 11.00 a.m. about the transportation of ganja, he informed the same in writing to the Deputy Superintendent of Police, East Zone, Rajamahendravaram, obtained orders to conduct raid and he secured the presence of mediators and other staff members and reached NH 16 junction at Chakradwarabandham, Suryaraopeta, Rajanagaram and started vehicle checking. At about 12.00 noon one numberless Royal Enfield Classic 350 CC bullet and TATA van bearing No.MH 04 DK 3484 came and the drivers stopped the vehicles and tried to ran away, thereupon the raid party apprehended those persons, on interrogation the petitioners/A.4 and A.5 disclosed their identity and found 1258 kgs. Of ganja in 74 bags, each bag containing 17 kgs., and total worth Rs.62,90,000/-, also seized the cash of Rs.69,800/- and 10 cell phones which are said to be used for the commission of the offence and the police lifted the samples for chemical analysis, arrested the accused after compliance of necessary procedure under the provisions

of the NDPS Act, under the cover of panchanama. On the strength of the same, the police registered the crime and issued F.I.R.

The main contention of the counsel for the petitioners is that the petitioners are falsely implicated in the offence, 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 1258 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

¹ AIR 2001 SC 3317

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**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 imprisonment of 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

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

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 to conclude 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* lead me to conclude that the petitioners committed the offence.

Thus in view of the principles laid down by the Apex Court, the petitioners are 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 24.02.2017 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 petitioners on bail in view of the principle laid down by the Apex Court

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in **Chenna Boyanna Krishna Yadav v. State of Maharashtra and another**⁴. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

13.04.2017
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⁴ (2007) 1 SCC 242