

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1655 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 to enlarge the petitioner/ accused in Crime No.143 of 2016 of Thondangi Police Station, East Godavari District, registered for the offence punishable under Sections 8(c) read with 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), as he is in judicial custody since 14.10.2016.

The offence allegedly committed by the petitioner is that he was found in possession of 72 kgs of ganja in 7 bags. The S.I. of Police, Thondangi Police Station, on receipt of credible information regarding possession of ganja in 7 bags by a person who was at Y-Junction, outskirts of Bendapudi Village, under suspicious circumstances, then he passed the information to the C.I. of police, and on instructions the S.I. of police secured the mediators and proceeded to scene, where they found the petitioner possessing seven bags and on seeing the police, he tried to skulk away, but the police detained him with the help of his staff and found in possession of 72 kgs., of ganja in 7 bags, lifted the samples after following necessary procedure in the presence of mediators under cover of mediators report, and seized the remaining contra band under the same panchanama.

The contention of the counsel for the petitioner is that the sole accused cannot carry 7 bags consisting of 72 kgs., of ganja and attempt to skulk away from the scene does not arise.

It is not specific that each bag containing specific quantum of ganja and it is in fact he was in possession of ganja in 7 bags

containing 72 kgs. But carrying of 72 kgs. weight depends upon the capacity of the individual, therefore, on this ground, this court cannot grant bail to the petitioner disbelieving the commission of offence under section 20(b)(ii)(c) of the NDPS Act.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition that huge quantity of ganja i.e. commercial quantity was seized from the petitioner, it is an offence punishable under Section 8(c) read with 20(b) 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, wherein it was held 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 in view of bar under Section 37 of the NDPS Act.

Section 37 of the NDPS Act creates an interdict on the power of the court to enlarge the petitioner, who is an accused of an offence punishable for a term of imprisonment of five years or more, unless the court records its satisfaction that the petition is based on reasonable ground that the petitioner did commit no offence and that there is no possibility of committing identical and similar offences while on bail. But the counsel for the petitioner did not show any reasonable ground to conclude that the petitioner did commit no offence. In such case, it is difficult for this court to record its satisfaction unless there are reasonable grounds that the petitioner did commit no offence, *prima facie*.

Time and again, the Apex Court reminded all the courts that for grant of bail, the court shall satisfy that there is a reasonable ground to conclude that the petitioner did commit no offence and that the

¹ AIR 2001 SC 3317

petitioner will not commit identical offences, while on bail. While granting bail, in compliance of Section 37 of the NDPS Act, without recording such conclusion, the court cannot grant bail. Here the total quantum involved in the crime is commercial quantity and unless the court records its satisfaction regarding the above two requirements, the petitioner cannot be enlarged on bail.

In **STATE OF MADHYA PRADESH v. KAJAD**(1supra) the Apex Court specifically 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 and exception under sub clause (ii) of clause (b) of Section 37(1) of the NDPS Act. 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 is further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act 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. Thus, in view of the principle laid down by the Apex Court in the Judgment referred to supra, the court is bound to record its satisfaction that the petitioner did not commit any offence, *prima facie*, to grant bail under Sections 437 and 439 of Cr.P.C. Thus, recording the satisfaction is *sine qua*

non to grant bail in view of interdict under Section 37 of the NDPS Act.

The learned counsel for the petitioner contended that the petitioner is in judicial custody since a long time and hence the petitioner is entitled to bail.

In **CHENNA BOYANNA KRISHNA YADAV v. STATE OF MAHARASHTRA AND ANOTHER**² the Apex Court made it clear that when gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail.

Thus, in view of the principle laid down by the Apex Court in **STATE OF MADHYA PRADESH v. KAJAD** (1supra), the court is bound to record its satisfaction that the petitioner did not commit any offence, *prima facie*, to grant bail under Sections 437 and 439 of Cr.P.C. Thus, recording the satisfaction is *sine qua non* to grant bail in view of interdict contained under Section 37 of the NDPS Act.

Therefore, I find no ground to conclude that the petitioner did commit no offence under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act, hence he cannot be enlarged on bail and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

06.04.2017
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² (2007) 1 SCC 242