

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 2776 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 petitioners/A-3 and A-4 on bail in Crime No.3 of 2017 of Nathavaram Police Station, Visakhapatnam District for the offence under Sections 20(b)(i)(c) r/w 8 (c) and 25 of N.D.P.S Act and they are in judicial custody since 25.01.2017.

The case of the prosecution is that on 25.01.2017 on receipt of credible information about transportation of ganja, vehicle check was conducted at Vedurapalli junction and one vehicle bearing No. DL3 CBK 0578 indogo CS GLX come from Adakula village and proceeding to Vedurapalli and on noticing the vehicle check by police, the accused tried to fled away. But, the Sub-Inspector of Police along with staff chased the car and found five persons in the car and two persons escaped from the scene of offence and three other persons were apprehended, on interrogation they disclosed their identity and on search of the car, they found ganja of 32 kgs. and after following necessary procedure, drawn the samples and seized the contraband under the cover of mediators' report, arrested the petitioners. But, A-1 and 2 were absconding, till today they are not arrested and on the strength of the mediators' report, the above crime was registered for the offences mentioned supra.

The main contention of the learned counsel for the petitioners is that there was no progress in the investigation, A-1 and A-2 were

not arrested till today, that apart the petitioners who are the drivers of the vehicle never involved in any transportation of ganja prior to the alleged incident at any time and therefore, they cannot be kept in prison as pre-trial detainees and that A-5 who is similarly placed, was enlarged on bail vide CrI.M.P.No.475 of 2017 on 23.02.2017 by the Special Judge under NDPS Act. The petitioners are also entitled for bail to maintain the parity.

The learned Public Prosecutor the State of Andhra Pradesh would submit that A-1 and A-2 were absconding and thereby they were not arrested. But, failure to arrest A-1 and A-2 is not a ground and similarly release of A-5 on bail is also not a ground to enlarge the petitioners herein on bail being the drivers of the vehicle involved in the crime transporting ganja.

Even according to the learned counsel for the petitioners that these petitioners are the drivers driving the vehicles involved in the crime and occupied by A-1, A-2 and A-5 along with ganja of 32 kgs involved in the crime is commercial quantity.

Section 8(c) of N.D.P.S Act prohibits production, 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.

Here, it is not the case of the petitioners that they possess any authorisation or licence or permit to transport ganja. They are admittedly drivers of the vehicle involved in the crime and in view of Section 8 (c) of the Act, the petitioners being the drivers are also equally liable for the offence along with the persons who are transporting ganja. Therefore, such violation of Section 8 (c) of the Act would attract the offence punishable under Section 20(b)(i)(c) of the Act.

Section 37 of NDPS Act created an interdict to grant bail for an offence punishable under various provisions of the Act, where a commercial quantity of contraband is involved. According to Section 37(1)(b) of NDPS Act, unless the Court records its satisfaction that the petitioner did commit no offence and that he would not commit no offence again while on bail under Section 439 Cr.P.C in serious offences like the offence punishable under Sections 8 (c) r/w Sec. 20(b)(i)(c) of NDPS Act.

In *State of Madhya Pradesh v. Kajad*¹ the Supreme 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

¹ AIR 2001 SC 3317

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*² 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*³ 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 supra, Section 37 of NDPS Act, unless the Court concludes that the accused is not guilty based on reasonable

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

ground and that there is no possibility of committing similar offences while on bail, where the offences are punishable for 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 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 above crime under NDPS Act, where commercial quantity is involved.

In view of the law declared by the Supreme Court in the judgments in *Kajad*, *Maktool Singh*, *Customs New Delhi* cases referred supra and Section 37 of the Act, the petitioners are not entitled to claim bail, as the quantity of ganja involved is commercial and the offence committed by them is punishable with imprisonment for a term more than five years, granting bail is an exception and negating bail is a routine, in view of the law declared by the Apex Court in the judgments referred supra.

One of the contentions raised by the learned counsel for the petitioners is that A-5 was already enlarged on bail, but that itself is not a ground to enlarge the petitioners on bail since he belongs to Visakhapatnam and the Special Judge for trial of offences under N.D.P.S. Act imposed certain conditions though he is similarly

placed. Therefore, such release of A-5 is not a ground to enlarge the petitioners herein on bail.

In view of the admission made by the petitioners that they are drivers engaged for transporting ganja in the vehicles at the time of the incident i.e. vehicle check, finding contraband in the vehicles. Therefore, the petitioners are disentitled to claim bail in the above crime, that apart, these petitioners are residents of Aryanagar, Kanapur, U.P. and Bihar State respectively and in case the petitioners are enlarged on bail, it is difficult to secure their presence before the Court during trial and at the same time, it is difficult for the Court to proceed with the trial and dispose of the matter in accordance with law.

Hence, on overall consideration of the entire material available on record, I find no ground to enlarge the petitioners on bail.

In the result, this Criminal Petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 19.04.2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.2776 OF 2017

Date:19.04.2017

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