

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1354 OF 2017

ORDER:

This Criminal Petition is filed under Sections 437 and 439 of Cr.P.C. to enlarge the petitioner on bail in connection with Crime No.14 of 2016 of Kotananduru Police Station, East Godavari District, registered for the alleged offences punishable under Section 8 (c) r/w 20(b) (ii) (c) of the N.D.P.S. Act, 1985. (In short “the Act”).

Petitioner herein is A.1 in the above crime.

The case of prosecution, in brief, is as follows:

On 14-2-2016, Inspector of Police, Kotananduru Police Station, on receipt of reliable information about the illicit transportation of Ganja, he along with staff and mediators proceeded to Talupulamma thalli temple, Kotananduru and found petitioner and A.2 coming in a red colour accent car bearing registered No.MH 04 AR 2928, verified and seized 5 packets of Ganja each packet containing 2 KGs of Ganja from the possession of petitioner after drawn 50 grams of sample from each packet, under the cover of mediators’ report. On the basis of mediators’ report, police registered a case in the above crime. Hence, the petitioner has allegedly committed the offences referred supra.

The present petition is filed on two grounds.

The first ground is non-compliance of Section 42 of the Act and second ground is non-compliance of Section 50 of the Act.

So far as Section 42 of the Act is concerned, Investigating Agency is required first to inform about an offence punishable under Section 8 (c) r/w 20(b) (ii) (c) of the N.D.P.S. Act, 1985 and non-compliance of this vitiates the entire procedure.

In *BHASKARA GOVINDU & ANOTHER V. STATE OF ANDHRA PRADESH, VISAKHAPATNAM DISTRICT, REP. BY PUBLIC PROSECUTOR, HIGH COURT* ⁽¹⁾ held at paragraph 8 of the said judgment, this Court discussed about importance of violation of Section 42(2) of the NDPS Act and the learned counsel for the petitioners mainly drawn attention of this Court to the judgment of Apex Court in *SARIJA BAND ALIAS JANARTHANI ALIAS JANANI V. STATE THROUGH INSPECTOR OF POLICE* ⁽²⁾, where the Apex Court discussed about the requirement of compliance of Section 42 of NDPS Act and its relevancy at the time of considering of application at the time of granting bail.

The other contention raised before this court is about the non-compliance of Section 50 of the Act. Here, the person accused is not searched and no contraband was seized from the person of accused but conducted seizure of the car and found contraband from the dickey of the car. Therefore, insisting compliance of Section 50 of the Act does not arise since the presence of accused was not searched.

¹ 2016 (0) Supreme (AP) 458

² 2004 12 SCC 266

Learned counsel for the petitioner placed reliance on a decision reported in *KISHAN CHAND Vs. STATE OF HARYANA* ⁽³⁾ wherein the apex court discussed about the effect in non-compliance of Section 42 of the Act while holding that it is mandatory and sending of report as required under Section 57 will be no compliance, factually and/or in the eye of law with provisions of Sections 42 and 57 operate in different fields and at different stages, and each has to be strictly complied with as per its own terms.

In the facts and circumstances of the above decision, the Assistant Sub-Inspector of Police conducted raid and detected the offences. Here, Inspector of Police who is an officer of gazetted rank conducted search and detected the offences punishable under Section 8 (c) r/w 20(b) (ii) (c) of the Act, 1985. Therefore, in view of the law declared by the apex court in *BHASKARA GOVINDU & ANOTHER V. STATE OF ANDHRA PRADESH, VISAKHAPATNAM DISTRICT, REP. BY PUBLIC PROSECUTOR, HIGH COURT* (3rd cited).

non-compliance of Section 42 of the Act, 1985, when search was conducted by officer gazetted rank would not vitiate, moreover, non-compliance of Section 50 the Act, 1985, does not arise.

I find no ground to vitiate the entire proceedings prima facie, however, the quantum of Ganja seized from the possession of petitioner is commercial quantity from the dickey of the car is commercial quantity and thereby, Section 37 would apply.

³ (2013) 2 SCC 502

In *STATE OF MADHYA PRADESH V. KAJAD*⁽⁴⁾, 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 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*⁽⁵⁾, 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*⁽⁶⁾ it was held that the Court has to keep in mind two conditions i.e, the

⁴ AIR 2001 SC 3317

⁵ (1999) 3 SCC 321

⁶ 2004 (1) JCC 662

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 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 not 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 crimes under NDPS Act, where commercial quantity is involved.

The general 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 with investigation in case the petitioner is enlarged on bail, the Court can enlarge the accused on bail.

Here, in this case, material on record goes to show that prima facie, the petitioner did commit offence and in such a case, it is difficult for me to enlarge the petitioner on bail in view of the law declared by the apex court in the decisions referred above.

Hence, I find no ground to enlarge the petitioner on bail and as such, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 28-2-2017.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 28-2-2017.

Dvs