

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL PETITION No.7802 OF 2017**

**ORDER:**

Petitioners, who are A2 and A3 in Crime No.80 of 2017 on the file of the Station House Officer, Bommuru Police Station, Visakhapatnam District, registered for the offence punishable under Section 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 ( for short 'the Act'), filed this petition under Sections 437 and 439 Cr.P.C., seeking bail

2. Learned counsel for the petitioners submitted that the petitioners were falsely implicated in this case; therefore, it is a fit case to grant bail to the petitioners.

3. Learned Additional Public Prosecutor representing the State submitted that in view of Section 37 of the Act, the petitioners are not entitled for bail.

4. The case of the prosecution is that on 02.04.2017, the Station House Officer, Bommuru Police Station, on receipt of reliable information about illegal transportation of ganja from Visakhapatnam forest area to Maharashtra, after obtaining authorization from the Deputy Superintendent of Police, East Zone, Rajahmundry, he along with other mediators proceeded to Gammon bridge entrance, Diwancheruvu of Rajanagaram Mandal, East Godavari District for the purpose of checking the vehicles. The S.H.O. intercepted a lorry bearing No. AP 31 TT 2224 and found A1 to A3. The S.H.O. seized 2150 kgs of ganja from the lorry and drew sample by following due procedure. After completion of necessary formalities, the petitioners were produced before the concerned Court.

5. The petitioners along with A1 filed CrI.M.P.No.687 of 2017 on the file of the I Addl. District and Sessions Judge, East Godavari at Rajamahendravaram, under Sections 437 and 439 Cr.P.C. seeking bail and the same was dismissed on 04.05.2017. Again, the petitioners and A1 filed CrI.P.No.4315 of 2017 on the file of this Court, under Sections 437 and 439 Cr.P.C. seeking bail and not pressed the petition on 16.06.2017 insofar as the petitioners-A2 and A3 are concerned.

6. Learned counsel for the petitioners submitted that the 1<sup>st</sup> petitioner-A2's father is suffering with heart ailment. Nothing is placed before this Court to show whether the 1<sup>st</sup> petitioner-A2 is having brothers and sisters or not. A perusal of the record reveals that the investigation is in progress. A perusal of the record reveals that 2150 kgs of ganja was seized from the possession of the petitioners, which is a commercial quantity.

7. In order to appreciate the rival contentions, this court is placing reliance on the following decisions:

(i) In **STATE OF M.P. V KAJAD**<sup>1</sup>, the Hon'ble apex Court held at paragraph No.5 as follows:

5. ... The purpose for which the Act was enacted and the menace of drug trafficking which it 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 an exception under sub-clause (i) of clause (b) of Section 37(1). 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 has further to be noticed that the conditions for granting

---

<sup>1</sup> (2001) 7 SCC 673

the bail, specified in clause (b) of sub-section (1) of Section 37 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.

(ii) In **COLLECTOR OF CUSTOMS V AHMADALIEVA NODIRA**<sup>2</sup>, the Hon'ble apex Court at paragraph No.7 as follows:

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: 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. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. ... ..

(iii) The Hon'ble apex Court reiterated the same principle in **UNION OF INDIA V SANJEEV V. DESHPANDE**<sup>3</sup>.

8. As per the principle enunciated in the cases cited *supra*, the court can grant bail to the persons involved in the cases under the Act, if it satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if the accused is released on bail, he will not involve in similar type of offences.

9. A perusal of the record *prima facie* reveals that the petitioners committed the alleged offence. As rightly pointed out by the learned Additional Public Prosecutor, if the petitioners are released on bail, the possibility of

---

<sup>2</sup> (2004) 3 SCC 549

<sup>3</sup> (2014) 13 SCC 1

involving in similar type of offences cannot be ruled out completely.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to grant bail to the petitioners.

11. Accordingly, the Criminal Petition is dismissed.

---

**T.SUNIL CHOWDARY, J**

**DATED: 04-09-2017**

Hsd

