

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1327 OF 2017

ORDER:

This criminal petition, under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/ A.2 to A.4 on bail in Cr.No.113 of 2016 of Yellamanchili Rural Police Station, Visakhapatnam District, for the offences allegedly committed by them punishable under Sections 20(b) (1) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). They are in judicial custody since 24.12.2016.

The case of the prosecution, in brief, is that on reliable information about illegal transportation of ganja on 24.12.2016 the police reached highway near Tandaladhibba Village, Yelamanchili Mandal, intercepted the accused while transporting ganja and seized 125 kgs., from their possession after following necessary formalities prescribed under the NDPS Act and arrested the accused on 24.12.2016 itself.

The contention of the counsel for the petitioners before this court is that the petitioners were found traveling in the auto, but they were not transporting ganja, foisted a false case against them.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition and placed reliance on the Judgment in **STATE OF MADHYA PRADESH v. KAJAD**¹ wherein the Apex Court held that a person accused of an offence punishable for a

¹ AIR 2001 SC 3317

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 and prayed to dismiss the criminal petition.

As per the material available on record, the petitioners were carrying on 6 bags of ganja, 5 bags contain 20 kgs., each and one bag contains 25 kgs., total 125 kgs., of ganja seized from the petitioners under the cover of mediators report and they also confessed that to earn money and to meet the expenses of Sankranti festival, they are carrying on ganja.

Learned counsel for the petitioners mainly contended that the procedure under Section 50 of the NDPS Act has not been followed for conducting search of the persons.

Here the petitioners were searched and found no contra band in their possession, however, they are keeping ganja bags at their foot while sitting in the auto. In such case, Section 50 of the NDPS Act need not be complied *prima facie* for such search of the bags. Therefore, on this ground the court cannot enlarge the petitioners on bail.

The total quantity of ganja found transporting is 125 kgs., according to the mediators report, and it is a commercial quantity as per the Schedule under the NDPS Act. In such a case, the petitioners are not entitled to claim bail as a matter of right in view of interdict contained under Section 37 of the Act.

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). 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.

In **STATE OF UTTARANCHAL VS. RAJESH KUMAR GUPTA²**, and **UNION OF INDIA v. RATTAN MALLIK @ HABUL³** the Apex Court specifically held that recording of satisfaction that accused is not guilty of offence and that he is not likely to commit any offence while on bail.

Thus, in view of the principles laid down by the Apex Court in the Judgments referred to supra, the court is bound to record its satisfaction that the petitioners 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.

² 2007 (1) Crimes 6 (SC)

³ (2009) 2 SCC 624

In view of the law declared by the Apex Court in the Judgments referred to supra, it is difficult for me to accept the contention of the counsel for the petitioners at this stage to enlarge the petitioners on bail as the offence allegedly committed by them collectively would constitute an offence punishable under section 8 (c) read with 20(b) of the NDPS Act, since 125 kgs., of ganja was found transporting in the auto of the accused collectively.

The other contention of the counsel for the petitioners is that the petitioners are in jail since 24.12.2016.

In **CHENNA BOYANNA KRISHNA YADAV -VS- STATE OF MAHARASHTRA AND ANOTHER**⁴ 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. The same principle is reiterated in **RAJESH RANJAN YADAV @ PAPPU YADAV VS CBI THROUGH ITS DIRECTOR**⁵ while deciding the case it was held that it is one of the considerations in deciding whether to grant bail to an accused or not is, whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, and at the same time a balance has to be struck between the right to personal liberty guaranteed under Article 21 of the constitution of India and the interest of society, as no right can be absolute.

Therefore, languishing in jail for a longer period is not a ground to grant bail. Hence, I find no ground to enlarge the

⁴ (2007) 1 SCC 242

⁵ (2007) 1 SCC 70

petitioners on bail, at this stage. However, the Sessions Judge is directed to dispose of the matter as expeditiously as possible, since the petitioners are under pre-trial detention, without any delay.

With the above direction, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

21.02.2017
BV

