

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.340 OF 2017

ORDER.

This Criminal Petition is filed under Sections 437 and 439 of Cr.P.C. to enlarge the petitioner on bail in Crime No.71 of 2016-17 of Prohibition & Excise Police Station, Rampachodavaram, registered for the alleged offences punishable under Sections 8 (c) read with 20 (b) (ii) & (c) of NDPS Act, 1985.

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

On 18-8-2016 at about 09.00 A.M., the Prohibition and Excise, Enforcement Wing, Kakinada received credible information about the transportation of Ganja and they secured mediators and proceeded to Rampachodavaram village and started vehicle checking at forest check post. Then one Ashok Lay Land Tipper 10 tier Lorry bearing No.AP 29 U 0353 came towards Rampachodavaram and the Police found one person in the lorry who is latter identified as A.1 and the said persons in the lorry is in possession of 310 bundles covered with paper and weight of the bundles is 706.7 kgs. and all are containing Ganja. After following necessary procedure, police lifted sample and sealed properly as per the procedure prescribed under the NDPS Act. Police registered the Mahazarnama as a case in Cr.No.71 of 2016-17 for the above referred offences punishable under Sections referred above.

It is the case of the petitioner that investigating agency did not comply Section 50 of NDPS Act and petitioner is only a driver and has no knowledge about the nature of the goods being transported in the vehicle and thereby, he cannot be made liable for the alleged offences punishable under Sections referred supra. The Police also seized Rs.4,000/- and cell

phone from A.1 on his personal search and thereby, on account of such contravention, he is entitled to bail.

Petitioner herein is A.1 in the above crime.

He allegedly transported Ganja in the lorry referred supra on payment of hire charges of Rs.4,000/-. He did not dispute the transportation but contended that he has no knowledge about the nature of goods being transported and he is innocent of alleged offences.

No doubt the petitioner is a driver who is found transporting Ganja but transportation of ganja without authorization or licence is an offence.

According to Section 8 of NDPS Act, *no person shall*

- (a) *cultivate any coca plant or gather any portion of coca plant; or*
- (b) *cultivate the opium poppy or any cannabis plant; or*
- (c) *produce, 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 authorization also in accordance with the terms and conditions of such licence, permit or authorization; Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in*

this behalf; 1 (provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.)

Thus, the transportation of Ganja is contravention under Section 8 (c) of NDPS Act and when the petitioner is found transporting Ganja of 706.7 kgs, it is a commercial quantity.

One of the contentions raised by the learned counsel for the petitioner is that he has no knowledge about the nature of goods being transported. But, Sections 35 and 54 of the Act contains presumption as to knowledge and it is reversal burden placed on the petitioner to explain their possession. Therefore, in view of Sections 35 and 54 of the Act, it is not open to the petitioner to contend at this stage that he has no knowledge, of course, the presumptions contained under Sections 35 and 54 are rebuttable and till such presumption is rebutted, he is presumed to have knowledge about the goods being transported in the vehicle and therefore, this contention holds no substance.

As the contention referred by the learned counsel for the petitioner is that Section 50 of NDPS Act is not violated for non-compliance of Section 50 of the NDPS of Act, petitioner is entitled to bail drawing attention of this court to the decision of the apex court reported in *STATE OF RAJASTHAN v. PARMANAND AND ANOTHER* (¹). As seen from the contentions of last para of page No.4 of panchanama, a personal search of petitioner was conducted and cell phone was seized.

Section 50 of the NDPS Act is fulfilled by personal search but the officer who searched the person of A.1 though Excise Officer, does not amount sufficient compliance in view of the judgment reported in *STATE OF RAJASTHAN v. PARMANAND AND ANOTHER* (^{1st cited}) but here no

¹ (2014) 5 SCC 345

contraband was seized from the possession of petitioner. He was only a transport vehicle driver i.e., lorry. Therefore, non-compliance of Section 50 of the NDPS Act in the absence of seizure of any contraband is of no effect and as such non-compliance would not vitiate prima facie the entire case of the prosecution.

However, in the present case, 706.7 kgs of Ganja was seized from the transporting person i.e., A.1, in such a case, Section 37 of the Act is applicable as quantity involved in this case is commercial quantity as per the schedule.

In a decision reported in *GADE LAKSHMI MANGRAJU ALIAS RAMESH V. STATE OF ANDHRA PRADESH* (²) the apex court specifically held that the purpose for which NDPS Act was enacted.

Thus, in view of the principle laid down in the above judgment, grant of bail for the offences punishable under Sections 8 (c) read with 20 (b) (ii) & (c) of NDPS Act, 1985 with imprisonment of five years, the petitioner cannot be granted bail and such grant of bail is an exception.

In the present case, commercial quantity of 706.7 kgs was found transporting in the lorry being driven by the petitioner, therefore, in view of the law laid down in *STATE OF MADHYA PRADESH v. KAJAD*³ the petitioner is not entitled to claim any bail.

Hence, I find no ground to conclude that petitioner did commit no offence in view of the specific admission about transporting Ganja without knowledge about the nature of the goods being transported. Therefore, the petitioner is not entitled to claim bail.

² 2001 Cri LJ 3317

³ AIR 2001 SC 3317

In view of the facts and circumstances of the case, the trial court concerned is directed to complete the trial of the matter as expeditiously as possible and not later than six months after filing charge sheet.

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 31-1-2017.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 31-1-2017.

Dvs