

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3203 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 by the petitioner/A3 to enlarge him on bail in Crime No.364 of 2016 of Bommuru Police Station, Rajamahendravaram, East Godavari District, registered for the offences punishable under Section 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). He is in judicial custody since 28.11.2016.

The petitioner was produced on execution of P.T. warrant before the Court and the basis for issuing P.T. warrant was the confession of the driver. In normal course, the confession of the co-accused is not a substantive piece of evidence, but the Apex Court in ***Kanhaiyalal v. Union of India (UOI)***¹ held that at the stage of granting bail in NDPS cases, the statement of the driver of the vehicle recorded by the police can be accepted. In view of the principle laid down by the Apex Court, the confession made by the co-accused/driver of the vehicle is sufficient for the purpose of deciding the present application.

Learned counsel for the petitioner contended that the petitioner did commit no offence and he was falsely implicated by the police.

Learned Public Prosecutor for the State of Andhra Pradesh would contend that the material on record is suffice to conclude that the petitioner committed offence punishable under Section 8 (c) read with 20 (b) (ii) (c) of the NDPS Act and found transporting commercial

¹ AIR 2008 SC 1044

quantity of Ganja, therefore, in view of the embargo contained in Section 37 of NDPS Act, the petitioner is not entitled to claim bail as of right in view of the law declared in “***State of Madhya Pradesh v. Kajad***²” “***Maktool Singh v. State of Punjab***³” and “***Customs, New Delhi v. Ahmadalieva Nodira***⁴”.

The petitioner herein is also accused in Crime No.56 of 2016 of Kavati Police Station and he was granted bail by order dated 21.03.2017 in CrI.M.P.No.100 of 2017 as the quantum involved in the said crime is only 18 kgs of Ganja, that is not commercial quantity and that is only an offence punishable under Section 20(b) and 8(c) of NDPS Act and the punishment for the said offence is six months and it is bailable offence. Merely because, the petitioner was enlarged on bail in other crime, he is not entitled to claim bail as a matter of right since in the present case, commercial quantity of 1235 kgs of Ganja is involved.

According to the prosecution, 1235 kgs of Ganja was found while transporting in the lorry, but the petitioner was not readily present. However, according to the driver, the petitioner and others loaded the Ganja in lorry, to unload at Hyderabad. The quantity involved in this case is commercial quantity and that too, the petitioner involved in identical offences after the present incident. Hence, I find no reasonable ground to conclude that the petitioner did not commit any offence punishable under the provisions of NDPS Act and that the petitioner will not commit any similar offence while he was on bail.

² AIR 2001 SC 3317

³ (1999) 3 SCC 321

⁴ 2004 (1) JCC 662

The material on record would *prima facie* establish that the petitioner committed offence punishable under Section 8 (c) read with 20 (b) (ii) (c) of the NDPS Act.

In this connection, learned Public Prosecutor for the State of Andhra Pradesh relied on the judgment of Apex Court rendered in **“State of Madhya Pradesh v. Kajad”**, (referred supra) wherein the Apex 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”** (referred supra) the 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”** (referred supra) 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.

Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Sections 437, 438 & 439 of Cr.P.C. 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 of Cr.P.C. are equally applicable to the bail applications filed for the offences punishable under Section 8(c) read with Section 20(b)(ii)(c) of NDPS Act, for enlarging the accused in the crimes under NDPS Act, where commercial quantity is involved.

In view of the law declared in the above judgments and since the material on record discloses that the petitioner was found transporting 1235 Kgs of Ganja i.e., commercial quantity, and the offence allegedly committed by the petitioner is punishable under Section 8(c) read with Section 20 (b)(ii)(c) of N.D.P.S. Act, I find no ground to enlarge the petitioner on bail. The Sessions Judge shall decide the matter at an early date, in accordance with law.

In the result, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

Dt.26.04.2017
ssp