

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.208 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioners/A1 and A2 in Crime No.123 of 2016-17 of Prohibition and Excise Station, Rampachodavaram registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The case of the prosecution, in brief, is that on 19.11.2016 at about 10.00 AM, the Prohibition and Excise Inspector, ESTF, Rajamahendravaram and Prohibition and Excise Inspector, Rampachodavaram and staff, on reliable information of storage of dry ganja, by securing mediators proceeded to Perikivalasa of Chintalapudi Grampanchayati of Y.Ramavaram Mandal (H.No.10-36) and found A1, then immediately served search proceedings under Sections 42 and 50 of the Act. A1 has consented to search in person, and on search they did not find any incriminating material. Then, A1 was asked to show his house for search. The police and mediators along with A1 entered the house and found one almirah, when the same was opened, they found identity cards and phone numbers of some persons. Thereafter, they entered into the left room and found one person sitting and mica bags arranged in three columns weighing 554.4 kgs of Ganja in

total. After following necessary procedure, they obtained samples under the cover of mediators report.

3. The present petition is filed on the ground that the petitioners are no way concerned with the offence and even if the mediators report is accepted, the contraband belongs to one sweet shop owner, who transported the same to their house through a tractor and asked them to keep the same in the house promising to take back within two or three days. Therefore, the contraband belonging to the said sweet shop owner, which was found in the house of the petitioners was seized by the police under cover of mediators report dated 19.11.2016. But, the said shop owner is not arrayed as accused. Hence, the petitioners are entitled for bail.

4. Whereas, learned Additional Public Prosecutor opposed the application on the ground that the quantity seized from the house is more than commercial quantity i.e. 554.4 kgs and the punishment prescribed for such offence is 10 years and thereby, the petitioners are not entitled for bail.

5. As seen from the material on record, the petitioners found in possession of the Ganja i.e. 554.4 kgs in their house, which was kept in iron safe. But according to the mediators report, it belongs to one sweet shop owner, who shifted the same in a tractor promising the petitioners to take back within two or three days. Taking advantage of the sentence in second

page of mediators report, the petitioners cannot plead that they are no way concerned with the offence.

6. Section 8 of the Act deals with prohibition of certain operations and no person shall 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 authorisation also in accordance with the terms and conditions of such licence, permit or authorisation. Thus, possessing Ganja by any person without any license or authorisation obtained from the concerned authorities *prima facie* is an offence under Section 8(c) of the Act. Thus, Ganja allegedly belongs to the sweet shop owner, who allegedly shifted the ganja in a tractor to the petitioners' house and kept in the custody of the petitioners in iron safe, which would *prima facie* attract the offence and amounts contravention of Section 8 (c) of the Act, which is punishable under Section 20 (b) of the Act. Therefore, the petitioners cannot be enlarged on bail.

7. The other contention raised by the learned counsel for the petitioners is that Section 50 of the Act has not complied

with and no option was given for conducting search of a person either in the presence of a magistrate or a gazetted officer.

8. Here in this case, notice under Section 42 of the Act was issued for conducting search of the premises i.e. house bearing No.10-36 and not search by a person. Section 50 of the Act is applicable only in case of search of a person and not for conducting search of the premises. Therefore, the alleged non compliance of Section 50 is not a ground to enlarge the petitioner on bail. In any view of the matter, the material on record *prima facie* shows that the petitioners are father and son and owners of the house from which the contraband was seized by the police under the cover of panchanama/mediators report and it amounts to contravention of Section 8(c) of the Act punishable under Section 20(b)(ii)(c) of the Act *prima facie* though they are owners.

9. The Apex Court in **State of Madhya Pradesh v Kajad**¹ held that when a person who indulged in an offence punishable for more than five years of imprisonment under the provisions of the Act cannot be released generally on bail. The Supreme Court in para 5 of the judgment discussed the scope of Section 37 of the Act and concluded that the purpose for which the 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

¹ 2001(7) SCC 673

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 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 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.

10. In view of law declared by the Apex Court and applying principle in the above judgment the quantity involved is 554.4 kgs and the punishment is more than five years, the material on record *prima facie* show possessing ganja in contravention of Section 8(c) of the Act, thereby, I find no ground to enlarge the petitioner on bail.

11. In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

18.01.2017
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