

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9648 OF 2017

ORDER:

Petitioner, who is A1 in Crime No.10 of 2017 on the file of the Station House Officer, K.D. Peta Police Station, Visakhapatnam District, registered for the offences punishable under Sections 8(c) read with 20(b) (ii) (c) and 25 r/w 8 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), filed this petition under Section 438 Cr.P.C., seeking anticipatory bail.

2. Learned counsel for the petitioner strenuously submitted that nothing was seized, much less contraband from the possession of the petitioner. He further submitted that from 06.03.2017 till date, the Investigating Agency has not made any efforts to seize any incriminating material from the possession of the petitioner. ***Per contra***, learned Additional Public Prosecutor representing the State submitted that the petitioner fled away from the spot on seeing the police. He further submitted that the investigation is in progress; therefore, it is not a fit case to grant pre-arrest bail in view of Section 37 of the Act.

3. The case of the prosecution is that on receiving reliable information about transportation of ganja, the Station House Officer, K.D. Peta Police Station, Visakhapatnam District, along with his staff proceeded to the outskirts of old K.D. Peta and observed that three persons were proceeding on two motor cycles. On seeing the police personnel, the two persons fled away from the spot and the Investigating Officer apprehended one person, who disclosed his name and identity as A3. The Investigating Agency seized 52 Kgs of ganja from two motor

cycles. After completion of necessary formalities, A3 was produced before the concerned Court for judicial custody.

4. The petitioner filed CrI.M.P.No.1177 of 2017 on the file of Metropolitan Sessions Judge-cum-Special Judge for Trial of offences under NDPS Act, Visakhapatnam, under Section 438 Cr.P.C. seeking anticipatory bail and the same was dismissed on 05.06.2017.

5. A perusal of the record *prima facie* reveals that the Inspector of Police seized 52 Kgs of ganja from the possession of A3. It is the further case of the prosecution that the petitioner fled away from the spot on seeing the police. As rightly pointed out by the learned counsel for the petitioner, nothing was seized from the possession of the petitioner. The petitioner was arrayed as A1 basing on the confessional statement of A3.

6. Learned counsel for the petitioner submitted that confession of co-accused is not admissible under law. To substantiate the arguments, he has drawn attention of this Court to the decision reported in **Chepuri Nageswara Rao v Station House Officer, Rolugunta P.S. Visakhapatnam District**¹, wherein it was held thus (paras 5 and 11):

“As seen from the material available on record, no recovery took place directly from the petitioners. However, it is totally based on the confessional statement of the co-accused, the petitioners were also implicated.

It is settled principle of law that an application for pre-arrest bail could be considered without detailed description of evidence and elaborate documentation of merits was to be avoided. Thus, no party had impression that his case was prejudged. Existence of *prima facie* case alone shall be considered rather than elaborate analysis or exhaustive exploration of merits. Hence, question of grant of bail in offences of serious nature could be decided keeping in view the nature and seriousness of such offence, character of evidence and larger public interest.”

¹ 2014 (2) ALT (CrI.) 256 (A.P.)

In the case cited supra, the petitioner was arrayed as an accused basing on the confession of co-accused. In the case on hand, as per the prosecution version, the petitioner fled away from the spot on seeing the police leave apart confession of co-accused. Whether the petitioner fled away from the place of occurrence or not will come to light during the course of investigation.

7. In order to appreciate the contention of the learned counsel for the petitioner, this Court is placing reliance on the decision reported in **State of U.P. v Amarmani Tripathi**², wherein the Hon'ble apex Court held at paragraph Nos.18 and 22 as follows:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi**, (2001) 4 SCC 280, and **Gurcharan Singh v. State (Delhi Admn.)**, (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, (2004) 7 SCC 528: (SCC pp. 535-36, para 11)

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

² (2005) 8 SCC 21

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598 and **Puran v. Rambilas**, (2001) 6 SCC 338.)”

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable.

8. As per the principle enunciated in **Amarmani Tripathi**, the admissibility, legality or otherwise of the confession of co-accused will be decided at the time of trial and the Court cannot exclude the confession of co-accused while deciding the bail application. In **Chepuri Nageswara Rao**, this Court has not considered the judgment of the apex Court in **Amarmani Tripathi**. The record *prima facie* reveals that the Investigating Agency has seized 52 Kgs of ganja, which is a commercial quantity.

9. As per the principle enunciated by the Hon’ble apex Court in **State of M.P. v. Kajad**³, **Collector of Customs v. Ahmadalieva Nodira**⁴ and **Union of India v Sanjeev v. Deshpande**⁵, the court can grant bail to the persons allegedly involved in the cases under the NDPS Act, though the contraband seized is a commercial quantity, if the court satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and

³ (2001) 7 SCC 673

⁴ (2004) 3 SCC 549

⁵ (2014) 13 SCC 1

even if he is released on bail, he will not involve in similar type of offences.

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 petitioner.

11. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

DATED: 20-10-2017

Hsd

