

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1795 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 to enlarge the petitioners/A-3 to A-5 on bail in Crime No.3 of 2016 of Prohibition & Excise Police Station, Rajamahendravaram, 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 NDPS Act'). They are in judicial custody since 05.04.2016.

The case of the prosecution, in brief, is that on 04.04.2016 on receipt of credible information, the Prohibition & Excise officials, Rajamahendravaram, conducted route watch, at about 11.30 a.m. found one Scarpio vehicle bearing No.AP 31 X 6358 proceeding from Konthamuru towards National High Way-16. On seeing the police, the driver of the Vehicle tried to skulk away and on search, A.1 and A.2 found in possession of 60 packets of ganja. Basing on the confession of A.1 and A.2, the Prohibition and Excise Officials on the same day raided the house of the petitioners/A.3 to A.5, and on search they are found in possession of 112 kgs., of ganja. Immediately, after following necessary procedure, seized the ganja from the possession of petitioners/ A.3 to A.5 under the cover of panchanama and produced them before the court for judicial remand. On the strength of the mediators report, the crime was registered for the above offences and issued F.I.R.

The main contention of the counsel for the petitioners is that the petitioners were engaged as coolies for construction work, but they were kept in the house along with ganja in one room and they did commit no offence. It is further contended that the petitioners

are from Visakhapatnam and the first petitioner/ A.3 suffering from ill health and prayed to enlarge the petitioners on bail.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition that huge quantity of ganja i.e. commercial quantity was seized from the petitioners, it is an offence punishable under Section 8(c) read with 20(b) of the NDPS Act and such persons cannot be enlarged on bail and placed reliance on the Judgment of the Apex Court in **STATE OF MADHYA PRADESH v. KAJAD**¹, wherein it was held 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 in view of bar under Section 37 of the NDPS Act and that apart in the earlier bail application, the petitioners raised identical grounds, but this court could not turned down the request of the petitioners and dismissed the petition vide Crl.P.No.1514 of 2017 dated 27.02.2017, and prayed to dismiss the present criminal petition.

As seen from the material on record, the first petitioner/A.3 was found at the entrance of the house and the other petitioners/ A.4 and A.5 were found in the house, which consists of two bed rooms and on search of North-West bed room, they found A.4 and A.5 and some brown coloured packets, mica bags and they themselves confessed before the raid party that they were engaged in packing ganja by A.1, thus the petitioners/A.3 to A.5 directly connected with packing of ganja which is an offence under the provisions of NDPS Act.

Learned counsel for the petitioners drawn the attention of this court to Section 8(c) of the NDPS Act, according to it, there is a

¹ AIR 2001 SC 3317

prohibition of certain operations and no person shall cultivate, produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-state, export inter-state, import into India, export from India or transship any narcotic drug or psychotropic substance without any authorization from the competent authority is a violation of provisions under the NDPS Act, therefore, packing is not included under Section 8(c) of the NDPS Act.

No doubt, the packing of ganja is not included under Section 8(c) of the NDPS Act. But the case of the prosecution is that warehouse of ganja in the house, which is covered by Section 8(c) of the NDPS Act and the total ganja involved is 112 kgs., which is commercial quantity as notified by the Government, thereby the contention of the petitioner that it would not attract the offence under the provisions of the NDPS Act is without any substance.

Section 37 of the NDPS Act creates an interdict on the power of the court to enlarge the petitioner, who is an accused of an offence punishable for a term of imprisonment of five years or more, unless the court records its satisfaction that the petition is based on reasonable ground that the petitioner did commit no offence and that there is no possibility of committing identical and similar offences while on bail. But the counsel for the petitioners did not show any reasonable ground to conclude that the petitioners did commit no offence. In such case, it is difficult for this court to record its satisfaction unless there are reasonable grounds that the petitioners did commit no offence, *prima facie*.

Time and again, the Apex Court reminded all the courts that for grant of bail, the court shall satisfy that there is a reasonable ground to conclude that the petitioners did commit no offence and

that the petitioners will not commit identical offences, while on bail. While granting bail, in compliance of Section 37 of the NDPS Act, without recording such conclusion, the court cannot grant bail. Here the total quantum involved in the crime is commercial quantity and unless the court records its satisfaction regarding the above two requirements, the petitioner cannot be enlarged on bail.

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) of the NDPS Act. 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. Thus, in view of the principle laid down by the Apex Court in the Judgment referred to supra, the court is bound to record its satisfaction that the petitioner 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.

The present criminal petition is renewal of earlier request made in Crl.P.No.1514 of 2017 which was dismissed by this Court on 27.02.2016 declining to enlarge the petitioners on bail. There are no changed circumstances, after dismissal of the earlier bail application.

In **STATE OF TAMIL NADU v. S.A. RAJA**², at paragraphs 8 & 9 of the Judgment, the Apex Court consistently held that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents. Therefore, on this ground also, the petitioners are not entitled to claim bail.

The learned counsel for the petitioners contended that the petitioners are in judicial custody since a long time and hence they are entitled to bail.

In **CHENNA BOYANNA KRISHNA YADAV -VS- STATE OF MAHARASHTRA AND ANOTHER**³ 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

² (2005) 8 Supreme Court Cases 380

³ (2007) 1 SCC 242

also be taken into consideration while deciding the question of grant of bail.

Thus, in view of the principle laid down by the Apex Court in **STATE OF MADHYA PRADESH v. KAJAD** (1supra), the court is bound to record its satisfaction that the petitioner 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 contained under Section 37 of the NDPS Act.

Therefore, I find no ground to conclude that the petitioners did commit no offence under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act, hence they cannot be enlarged on bail and the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, in view of long incarceration of the petitioners in prison as pre-trial detention, the trial court is directed to conduct trial and decide the matter within four months from the date of receipt of a copy of this order.

M. SATYANARAYANA MURTHY, J

16.03.2017
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