

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1323 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-1 and A-2 on bail in Crime No.26 of 2016 of Maredumilli Police Station, East Godavari District, 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 12.06.2016.

The case of the prosecution, in brief, is that the Inspector of Police, on 12.06.2016 at 11.30 a.m. on receipt of credible information about the transportation of ganja in a lorry and after obtaining permission from the Assistant Superintendent of Police, Rampachodavaram to conduct a raid, secured Village Revenue Officer as mediators, and along with his staff moved to Vetukuru junction, outskirts of Maredumilli Village and while conducting vehicle check at 12 noon, they found lorry bearing No.AP 30 T 8929 coming from Maredumilli at high speed, then the lorry was stopped by the Inspector of police, there three persons were found, who made a vain attempt to abscond from the lorry, but the Inspector of police with the help of his staff apprehended those three persons, and on verification of the lorry found 384 kgs. of ganja in the cabin of the lorry. After following necessary procedure, lifted the samples and arrested the petitioners under the cover of mediators report. On the strength of the mediators report the crime was registered against the petitioners and produced them before the court for judicial remand.

Sri T.D. Phani Kumar, learned counsel for the petitioners, though raised several contentions in the petition, but confined to his argument to non-compliance of Section 50 of the NDPS Act. Section 50 of the NDPS Act imposed an obligation on the investigating agency to conduct search of the person giving an option to the accused to be searched either in the presence of the gazetted officer or in the presence of the nearest Magistrate or by an Officer, who is duly authorized under Sections 41 and 42 of the NDPS Act.

According to Sub-Section (5) of Section 50 of the NDPS Act, when an officer duly authorised under Section 42 of the NDPS Act has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

Here, search of the cabin of the lorry was conducted and was not a personal search. Therefore, non-compliance of Section 50 of the NDPS Act is not a ground to enlarge the petitioners on bail. However, the petitioner is at liberty to raise such contention during trial before the Sessions Judge.

Therefore, I am of the view that the alleged non-compliance of Section 50 of the NDPS Act for search of the cabin of the lorry is not a ground to conclude that the petitioners did commit no offence under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act.

On the other hand, the petitioners were found in possession of 384 kgs. of ganja, and the same was seized under the cover of

panchanama. The contention of the petitioners that no specific overt acts were attributed against them and no *prima-facie* material was produced to conclude that they committed the offence punishable under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act. They are in judicial custody since long back and on account of their languishing in prison as pre-trial detention, their entire family is being put to starvation and hence sought for enlargement of the petitioners on bail.

As seen from the mediators report, the total quantity of ganja involved is more than 384 kgs. According to Section 8 (c) of the NDPS Act, there is a 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 and it is an offence punishable under Section 20(b)(ii)(c) of the NDPS Act. Here, the petitioners allegedly transporting 384 kgs., of ganja in the lorry, which is *prima facie* violation of Section 8(c) of the NDPS Act, that apart the total quantity involved in the case is a commercial quantity i.e. more than 20 kgs., In such a case, the petitioners are not entitled to claim bail as a matter of right in view of interdict contained under Section 37 of the NDPS Act.

In **STATE OF MADHYA PRADESH v. KAJAD**¹ the Apex Court specifically held 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

¹ AIR 2001 SC 3317

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). 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 **STATE OF MADHYA PRADESH v. KAJAD** (1supra), the court is bound to record its satisfaction that the petitioners 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.

M. SATYANARAYANA MURTHY, J

27.02.2017
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