

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1514 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 04.04.2016.

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 the 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.

The main contention of the petitioners before this court is that the entire investigation was over and the charge sheet was filed on 18.10.2016, thereby question of interference of the petitioners with further investigation, in the event of their enlargement on bail, does

not arise, and that there is no material to conclude, *prima facie*, that the petitioners committed the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the NDPS Act.

As seen from the material on record, the petitioners were found possession of 112 kgs. of ganja in their house, 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 that the petitioners have to maintain their family members, having small kids and on account of their languishing in prison as pre-trial detention, their entire family was 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 232 kgs., out of it 120 kgs. of ganja was seized from the possession of A.1 and A.2, whereas the petitioners were found in 112 kgs of ganja.

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 warehouse 112 kgs., of ganja, 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 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 under Section 37 of the NDPS Act.

¹ AIR 2001 SC 3317

One of the grounds raised by the petitioners before the Court that their entire family are starving on account of languishing them in jail, but that by itself is not a ground in view of interdict contained Section 37 of the NDPS Act and the law declared by the Apex Court in **STATE OF MADHYA PRADESH v. KAJAD** (1supra). 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 enlarge 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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