

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.4189 of 2017

ORDER:

This criminal petition is filed by the petitioners-accused Nos.2 and 3, under Sections 437 and 439 Cr.P.C., seeking bail in Crime No.32 of 2016 on the file of the Station House Officer, Kunavaram 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 Act').

2. The learned counsel for the petitioners submitted that the petitioners were falsely implicated in this case, therefore, it is a fit case to grant bail to the petitioners. ***Per contra***, the learned Additional Public Prosecutor representing the State submitted that the petitioners are not entitled for bail in view of Section 37 of the Act.

3. The case of the prosecution is that on 24.11.2016 the Inspector of Police, Yetapaka circle received credible information about the transportation of ganja. After following the due procedure, the Inspector along with the mediators reached 'T' junction, near Bus Stop of Jaggavaram village and while checking the vehicles, they intercepted the motorcycles on which the petitioners were proceeding along with four bags. The Inspector of Police seized 36.470 kgs of ganja from the possession of the petitioners and other accused. After

following the necessary formalities, he registered the above case. The petitioners filed Crl.M.P.No.238 of 2017 on the file of the I Additional District and Sessions Judge, East Godavari at Rajamahendravaram, and the same was dismissed on 13.03.2017.

4. A perusal of the record reveals that the Inspector of Police seized nearly 37 kgs., of ganja from the possession of the petitioners and other accused. The petitioners belong to State of Orissa. While dismissing the bail petition, the trial Court made an observation that the petitioners did not produce a single scrap of paper to prove their permanent residence. A perusal of the record *prima facie* reveals the role played by the petitioners in the commission of the offence.

5. While deciding the petitions of this nature, the Court shall not lost sight of Section 37 of the Act. A perusal of the record reveals that ganja seized is a commercial quantity. A perusal of the record *prima facie* reveals the role played by the petitioners in the commission of the offence.

6. In order to appreciate the contentions raised by the learned counsel for the petitioners, this Court is placing reliance on the following decisions;

i) In **State of M.P. v. Kajad**¹, the Hon'ble apex Court held at paragraph No.5 as follows:

5. ... The purpose for which the Act was enacted and the menace of drug trafficking which it intends to curtail is

¹ (2001) 7 SCC 673

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 an exception under sub-clause (i) 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.

(ii) In **Collector of Customs v. Ahmadalieva Nodira**², the Hon'ble apex Court at paragraph No.7 as follows:

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(iii) The Hon'ble apex Court reiterated the same principle in **Union of India v Sanjeev V. Deshpande**³.

As per the principle enunciated in the cases cited supra, the court can grant bail to the persons involved in the cases under the NDPS Act, if it satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and

² (2004) 3 SCC 549

³ (2014) 13 SCC 1

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

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the considered view that it is not a fit case to grant bail to the petitioners.

8. In the result, the Criminal Petition is dismissed.

22nd September, 2017

Rns

T.SUNIL CHOWDARY, J

