

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6270 OF 2017

ORDER:

Petitioner, who is A4 in Crime No.67 of 2017 on the file of the Station House Officer, Eleswaram Police Station, East Godavari District, registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), filed this petition under Sections 437 and 439 Cr.P.C., seeking bail

2. The learned counsel for the petitioner strenuously submitted that the petitioner is carrying on chicken business and he boarded the car on the date of incident at Eleswaram without knowing the transportation of ganja in the car. He further submitted that the petitioner was falsely implicated in this case; therefore, it is a fit case to grant bail to the petitioner. ***Per contra***, learned Additional Public Prosecutor representing the State submitted that the petitioner himself supplied the ganja to A1. He further submitted that investigation is in progress; therefore, it is not a fit case to grant bail, at this stage, in view of the pendency of the investigation.

3. The facts leading to filing of the present petition are briefly as follows: On 16-05-2017 at about 3.45 P.M., the Inspector of Police, Prathipadu P.S. came to know about transportation of ganja at the outskirts of Kotha Yerravaram. At about 5.45 P.M., police intercepted Tata Indigo car bearing No. AP 31 TC 5923 on suspicion. Out of 7 persons, in the car, 3 persons fled away from the spot. Police found 100 kgs of ganja in the dickey of the car and seized the same. After completion of necessary formalities,

police registered a criminal case. At the time of incident, the petitioner was travelling in the car. As per the allegations made in the complaint, the petitioner sold ganja to A1 and others.

4. The petitioner along with other accused filed Crl.M.P.No.851 of 2017 on the file of I Addl. District and Sessions Judge, East Godavari, Rajamahendravaram, under Sections 437 and 439 Cr.P.C. seeking bail and the same was dismissed by order, dated 02-06-2017 in view of Section 37 of the Act.

5. In order to appreciate the rival contentions, 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 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 (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 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

¹ (2001) 7 SCC 673

² (2004) 3 SCC 549

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.

6. As per the principle enunciated in the cases cited *supra*, the court can grant bail to the persons involved in the cases under the Act, if it satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if the accused is released on bail, he will not involve in similar type of offences.

7. In the instant case, the Police officials caught hold the petitioner and other accused while they were transporting 100 Kgs of ganja, which is a commercial quantity. The material placed before the court is *prima facie* sufficient to arrive at a conclusion that the petitioner has committed the offence punishable under Sections 8(c) read with 20(b)(ii)(c) of the Act. If the petitioner is released on bail, the possibility of involving in similar type of cases cannot be ruled out completely. Moreover, the learned Additional Public Prosecutor submitted that the investigation is in progress.

³ (2014) 13 SCC 1

8. 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 petitioners.

9. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

DATED: 04-08-2017

Hsd

