

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.2983 & 2654 of 2017

COMON ORDER:

These petitions are filed under Sections 437 and 439 of Criminal Procedure Code (for short "Cr.P.C.") by accused Nos. 4 & 6 in Crime No.31 of 2017 of Rajanagaram Police Station, East Godavari District registered for the offences punishable under Section 8 (C) read with 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act), to enlarge them on bail in connection with the above crime as they are in judicial custody since 16.2.2017.

2. The case of the prosecution, in brief, is that petitioners/A4 & A6 herein along with others were found transporting 440 Kgs of Ganja in 220 packets worth Rs.22,00,000/- on Ashok Leyland Van bearing No. OD 30-3198 from Balimela to Rajahmundry and during vehicle check, 220 packets of Ganja was found in the body of the lorry in 22 bags in the middle of paddy bags. After following the necessary procedure, police seized the contraband after drawing samples therefrom under the cover of mediators report, arrested the accused and remanded them to judicial custody.

3. Learned counsel appearing for petitioners contended that the petitioners did commit no offence and they were falsely implicated by the police on the confession of other accused. The petitioner/A4 was neither travelling nor connected with the alleged Ashok Leyland vehicle from which the Ganja Packets were recovered. Learned counsel also contended that both the

petitioners are residents of Hyderabad went to Rajahmundry in connection with property transaction but they were implicated falsely based on the confession of other accused. The petitioner/A4 is running the institution by name Mumin Educational Society and whereas the other petitioner/A6 is a student completed B.Tech and planned to go abroad for prosecuting higher studies. Certain material was produced to prove that the petitioner/A6 completed his B.Tech and petitioner/A4 running educational institution and that the petitioners did commit no offence and thereby there is no possibility of committing similar offence and prayed to enlarge the petitioners/A4 & A6 on bail.

4. Learned Public Prosecutor (State of Andhra Pradesh) would contend that the material on record is suffice to conclude that the petitioners/A4 and A6 committed offence punishable under Section 8 (C) read with 20 (b) (ii) (c) of the NDPS Act as they were found transporting commercial quantity of Ganja, therefore, in view of the embargo contained in Section 37 of NDPS Act, the petitioners are not entitled to claim bail as of right in view of the law declared in **“State of Madhya Pradesh v. Kajad¹” “Maktool Singh v. State of Punjab²” and “Customs, New Delhi v. Ahmadalieva Nodira.³”**

5. Undoubtedly, petitioners were not found traveling in Ashok Leyland Van but traveling in Maruthi Swift Desire Car following the lorry, where Ganja along with paddy being transported and these petitioners purchased the Ganja while in transit i.e high way

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

sale by A1 to A3 to these petitioners A4 and A6. The statements recorded by the police are relevant as per the Special Provisions of the Act and in **Babu@ Taxmul Hossain vs. State of Orissa**⁴, the Supreme Court while dealing with an offence punishable under Section 20(b) of NDPS Act, has concluded when the accused moved the Apex court for bail held that before trial stage what all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not and that at that stage, they cannot say that the accused is not guilty of the offence if the allegations made in the charge sheet is established nor can we say that the evidence having not been completely adduced before the court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the Court, and the validity of Section 37 (1) (b) having been upheld, the Court cannot take any other view. With the above observation, the Supreme Court declined to grant bail. Similarly in **“State of Madhya Pradesh v. Kajad”**, (referred supra), the latter declared that the Apex Court in **Babu@ Taxmul Hossain vs. State of Orissa** (referred supra), based on the confessional statements recorded and during investigation, court can conclude that those statements are proved, until it is dis-proved during trial.

⁴ 2001 (1) ALD (Crl.) 349 (SC)

At this stage, it is difficult to hold that there is reasonable ground to believe that the petitioner did commit any offence much less an offence punishable under Section 37 (1) (b)(ii)(c) of NDPS Act. The main recourse under Section 37 (1)(b) merely classify unless the Court is satisfied that there are reasonable grounds to believe that this petitioner did not commit any offence and that there is no possibility of committing similar offence while on bail, the Court cannot grant bail to the petitioner where commercial quantity is involved.

6. The material on record would prima facie establish that the petitioners committed offence punishable under Section 8(C) read with 20(b) (ii) (c) of the NDPS Act.

7. In this Connection, learned Public Prosecutor for the State of Andhra Pradesh relied on the judgment of Apex Court rendered in ***“State of Madhya Pradesh v. Kajad”***, (referred supra) wherein the Apex Court 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 is an exception under sub clause (ii) of clause (b) of Section 37(1). For granting 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.

8. In “**Maktool Singh v. State of Punjab**” (referred supra) the Supreme Court held that for all the offences punishable more than five years, the Courts power to release the accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

9. In “**Customs, New Delhi v. Ahmadalieva Nodira**” (referred supra) held that the Court has to keep in mind two conditions i.e, 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 and the expression reasonable grounds means something more than prima facie grounds and it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences.

10. Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Section 437, 438 & 439 are applicable. Besides the application of general provisions of Cr.P.C, certain safeguards are provided in the Act to grant bail, while placing reversal burden in view of Section 35 & 54 of NDPS Act. Therefore, the general principles governing bails under Sections 437, 438 & 439 are equally applicable to the bail applications filed for the offences punishable under Sections 8(C)

read with Section 20(b)(ii)(C) of NDPS Act for enlarging the accused in the crimes under NDPS Act, where commercial quantity is involved.

11. In view of the law declared in the above judgments and the material on record, the petitioners were found transporting 440 Kgs of Ganja i.e. commercial quantity and the offence allegedly committed by the petitioners are punishable under Section 20 (b) (ii) (C) of N.D.P.S. Act. Hence, I find no ground to enlarge the petitioners on bail. Consequently, these petitions are liable to be dismissed.

12. In the result, the criminal petitions are dismissed. Consequently, miscellaneous applications, pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

DATE: 20.04.2017
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