

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9017 OF 2017

ORDER:

Petitioners, who are A1 to A3 and A6 in Crime No.22 of 2017 on the file of the Station House Officer, Vikarabad Railway Police Station, registered for the offence punishable under Section 20 (b) 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. Learned counsel for the petitioners submitted that the petitioners were falsely implicated in this case.

3. Learned Additional Public Prosecutor representing the State submitted that the petitioners are not entitled for bail in view of Section 37 of the Act.

4. The case of the prosecution is that the petitioners along with others purchased ganja at Pathapatnam, Srikakulam District, with an intention to transport the same to Pune, State of Maharashtra. It is the further case of the prosecution that the petitioners along with others boarded Konark express at Visakhapatnam along with ganja bags. On receipt of reliable information, the Inspector of Railway Police inspected S-3 coach of Konark express at Tandur and seized 256 kgs of ganja from the possession of the petitioners and others. After completion of necessary formalities, the Inspector of Railway Police registered the above case.

5. A1 and A6 filed CrI.M.P.No.2708 of 2017 and A2 and A3 filed CrI.M.P.No.2710 of 2017 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar,

under Section 439 Cr.P.C. seeking bail and the same were dismissed on 09.08.2017.

6. A perusal of the record reveals that Inspector of Railway Police seized 256 kgs of ganja from the possession of the petitioners and others at Tandur and, after following due procedure, produced them before the concerned Court for judicial custody.

7. 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 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.

¹ (2001) 7 SCC 673

² (2004) 3 SCC 549

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.

8. 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.

9. In the instant case, the Inspector of Railway Police seized 256 Kgs of ganja, which is a commercial quantity, from the possession of the petitioners and others. The material placed before the court is *prima facie* sufficient to arrive at a conclusion that the petitioners have committed the alleged offence punishable under Section 20 (b) of the Act. If the petitioners are 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.

10. 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.

³ (2014) 13 SCC 1

11. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

DATED: 03-10-2017

Hsd

