

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1796 of 2017

ORDER:

This petition under Sections 437 and 439 of the Criminal Procedure Code is filed by petitioner/Accused No.3 in Crime No.65 of 2016 of Chintoor Police Station, Rajamahendravaram, registered for the offences punishable under Section 8 (c) r/w.20 (b)(ii)(c) of NDPS Act. Petitioner is in judicial custody since 06.10.2016.

The case of the Prosecution is that on 06.10.2016 on receipt of credible information about transportation of ganja, the Inspector of Police secured the presence of one KVS Raghavarao, Forest Range Officer, Chintoor, to conduct search in his presence and also secured other mediators and later secured one electronic weighing machine from CRPF party camped at Chintoor. The Inspector also secured the SI of Police, Head Constables, other Police Constables and along with all of them reached Kunavaram 'Y' Junction, Chatti Village. At about 1.00 p.m. one black colour car came from Chintoor side in which A.2 and A.3 were found and on seeing the Police they tried to escape. Police apprehended them and on interrogation, they disclosed that accused No.2 was purchasing ganja and the petitioner herein is the driver of the car in which the ganja is being transported. The confession of the petitioner and A.2 was reduced into mediators report and after following necessary procedure for drawing samples, the contraband was seized under cover of panchanama. On the strength of the same, the Police registered above crime and issued FIR.

The case of the petitioner before this Court is that he is only the driver of the vehicle and had no intention to transport ganja and thereby he cannot be made liable for punishment for the offence

under Section 8 (c) r/w.20 (b) of NDPS Act. He also contended that the entire investigation is completed and final report is also filed before the Judicial First Class Magistrate and nothing remains for investigation and thus prayed to enlarge the petitioner on bail in view of the long period of pre-trial detention.

The learned Public Prosecutor for the State of Andhra Pradesh while contending that the quantity involved in this offence is commercial quantity, thereby Section 37 of the Act is applicable and the petitioner being the driver is also equally liable and prayed to dismiss the petition.

The petitioner was allegedly found in the vehicle when they reached Kunavaram 'Y' Junction with load of ganja along with A.2. The contention of the counsel for the petitioner is that he is only a driver having no intention to transport ganja and involve in an offence punishable under Section 8 (c) r/w.20 (b) of NDPS Act. Undisputedly, the petitioner was driver of the vehicle at the time when the vehicle was stopped and transporting ganja. Transportation of ganja without permission or authorization by the competent authority is violation of Section 8 (c) of NDPS Act and it is punishable u/s.20 (b)(ii)(c) of the said Act. The quantity involved in the crime is more than commercial quantity ie.132 kgs.

The other contention of the petitioner is that he had no intention to transport ganja. But, Sections 35 and 54 of NDPS Act placed reversal burden on the petitioner-accused in view of the presumption under the Act. Therefore, till it is rebutted, the petitioners are deemed to be having mental element to commit an offence and at this stage it is difficult for this Court to conclude *prima facie* that he committed no offence. That apart, the total ganja

involved in this case is commercial quantity i.e. 132 kgs and in such a case Section 37 of the Act is applicable.

An identical question came up for consideration before the Apex Court in **State of Madhya Pradesh v Kajad**¹ wherein it has been held that when a person who indulged in an offence punishable for more than five years of imprisonment under the provisions of the Act cannot be released generally on bail. The Supreme Court in para 5 of the judgment discussed the scope of Section 37 of the Act and concluded that the purpose for which the Act was enacted and the menace of drug trafficking, which intends to curtail, is evident from its scheme.

In **Customs, New Delhi v. Ahmadaliev Nodira**² 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. In view of the law declared by the Apex Court in the judgments referred supra, Section 37 of NDPS Act, unless the Court concludes that the accused is not guilty based on reasonable ground and that there is no possibility of committing similar offences while on bail, where the offences are punishable for more than five years, he shall be enlarged on bail.

¹ 2001(7) SCC 673

² 2004 (1) JCC 662

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 Section 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 above crime under NDPS Act, where commercial quantity is involved.

The normal principle is that, unless the Court comes to a conclusion that there are no reasonable grounds that the petitioner/accused did commit no offence and that there is no apprehension of interference in case the petitioner is enlarged on bail, the Court can enlarge the accused on bail.

In the present case, the petitioner did not satisfy his contention that he had no intention to commit any offence under the Act. In view of the reversal burden placed on the petitioner, the Court shall presume that he had a mental element to commit said offence till it is rebutted. In such a case, the petitioner is disentitled to claim bail in view of the bar under Section 37 of the Act and the law laid down by the Apex Court in two judgments referred to above.

Hence, I find no ground to grant bail to the petitioner even though he has been in jail for a long period. In the result, this petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 08.03.2017
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