

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.509 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioners/A2 and A6 on bail in Crime No.59 of 2016 of Hukumpet Police Station, Visakhapatnam District, registered for the offences punishable under Section 8(c) read with Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The case of the prosecution, in brief, is that on 17.12.2016, at about 10.30 hours, the Sub-Inspector of Police, Hukumpeta, who was on other duty, and B.Devada, Station House Officer, on receiving credible information about transportation of Ganja from Pedabayalu towards Paderu via Kontili Village Junction of Hukumpet Mandal, securing the presence of mediators and other staff rushed to Konthali Village junction at 11.00 hours, conducting vehicle check, one Bajaj Auto bearing No. AP 31 TC 3856 coming from Hukumpeta towards Paderu side with six persons, two bags emitting hard smell of Ganja. Immediately, the said auto was stopped and on interrogation, the 1st petitioner confessed that he addicted to vices and decided to carry on Ganja business to earn easy money and doing the same for the last two years along with Jagarnadh Sahu, Mithun Kumar and Chandan Kumar of Bihar State. According to the 1st petitioner, he along

with his friends went to Araku by auto of Korra Pitru to the house of Janni Bhaskara Rao at Hukumpeta area and packed the purchased Ganja in two bags and loaded them in the rear side of the auto. Similarly, the 6th accused, who is the driver of the auto, confessed about the transportation of Ganja on being engaged by the other accused as driver of the auto.

3. The main contention of the learned counsel for the petitioners is that they are no way concerned with the offence and the 2nd petitioner/A6 is an innocent and he had no knowledge about the goods being transported in his auto, but at the request of the other accused, he accepted to transport the goods in his auto along with passengers therein and requested to enlarge him on bail.

4. Learned Additional Public Prosecutor contended that the quantity involved in the crime is more than commercial quantity and especially in view of Section 37 of the Act, they are not entitled to claim bail as of right. The second accused is one among the four accused, who are transporting Ganja in contravention of Section 8(c) of the Act, and it is an offence punishable under Section 20(b) of the Act since the quantity involved in the crime is more than commercial quantity. The sixth accused is the driver, who engaged to transport Ganja, pleaded that he does not know about the goods transporting in his auto, itself is not a ground to enlarge him on bail. Transportation of Ganja is in contravention of Section 8(c) of the Act.

5. Section 8 of the Act deals with prohibition of certain operations and no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation. Thus, possessing Ganja by any person without any license or authorisation obtained from the concerned authorities *prima facie* is an offence under Section 8(c) of the Act. *Prima facie* transporting Ganja of more than commercial quantity, which is 30 kgs and thereby Section 37 of the Act is applicable. Unless the Court finds that he is not a person, who was transporting Ganja of more than commercial quantity and that there is no chance of committing similar offence while on bail in case Court grant bail and the punishment prescribed for such offence is five years and thereby, the petitioners are not entitled for bail.

6. At this stage, it is difficult to exclude the petitioners from the above offence, when they were present at the time of search and seizure, in view of Sections 35 and 54 of the Act. In such a case, onus of proof is on the petitioners to prove that

they are not concerned with the Ganja in view of Sections 35 and 54 of the Act, which imposes reverse burden on them. The total ganja involved in this case is 30 kgs, which is a commercial quantity, Section 37 of the Act is applicable.

7. Moreover, in **State of Madhya Pradesh v Kajad**¹ the Apex Court 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.

8. 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 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 is 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

¹ 2001(7) SCC 673

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.

9. In view of law declared by the Apex Court and applying the principle in the above judgment as the quantity involved is 30 kgs and in contravention of Section 8(c) of the Act, I find no ground to enlarge the petitioners on bail.

10. In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

30.01.2017
kvrn

M.SATYANARAYANA MURTHY,J

