

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3225 of 2017

ORDER:

This criminal petition is filed under Section 438 of the Criminal Procedure of Code by the petitioner - accused No.9 in Crime No.171 of 2017 of Bhavanipuram Police Station, Vijayawada City, registered for the offences punishable under Sections 8 (c) and 20 (b) of the NDPS Act, seeking a direction to the Station House Officer to release the petitioner in the event of his arrest in connection with the above said crime.

The case of the prosecution is that on 22.03.2017 at about 17.00 hours on receiving credible information, the complainant – Sub Inspector of Police, Bhavanipuram Police Station, along with his staff and mediators went to the bus stop between cross roads hotel and Padmavathi Kalyanamandapam, Gollapudi, Vijayawada Rural, and arrested A1 to A7 while they are in possession of banned ganja and seized 202 kgs., of ganja, Skoda Car bearing No.AP 95959, 11 cell phones and ID Cards in the presence of mediators and drawn the panchanama and on the basis of the same, the said crime was registered. The contention of the petitioner is that the petitioner is only carrying on business in the name and style of KGN Transport, Nizamabad and he is no way concerned with the said offences, and prayed to enlarge the petitioner on pre-arrest bail.

It is a case where 202 kgs., of ganja was found transporting in a Skoda car by A1 to A7, but the petitioner - A9 was not present in the car at the time of search and seizure. But, during investigation, the accused were examined and they disclosed about the role of the petitioner and based on such confession, the petitioner is also arrayed as an accused.

The main contention of the petitioner is that the confession of co-accused is not sufficient piece of evidence and on the basis of such confession, the accused cannot be implicated in the case.

In *Kanhaiyalal v. Union of India*¹ the Apex Court held that such confession is sufficient if it is proved to be voluntary at the stage of considering bail application. Therefore, at this stage, it is difficult to disbelieve the confession. However, the total quantity involved in the offence is 202 kgs., which is commercial quantity and in view of the bar under Section 37 of the NDPS Act, unless the Court finds a reasonable ground to believe that the petitioner did commit no offence and that he will commit no offence while on bail, the Court can grant bail to the petitioner, leave alone the pre-arrest bail. But, in this case, the quantum involved is commercial quantity and there is no reasonable ground to believe that the petitioner did commit no offence.

In *State of Madhya Pradesh v. Kajad*², *Maktool Singh v. State of Punjab*³ and *Customs, New Delhi v. Ahmadalieva Nodira*⁴ the Supreme Court consistently held that in any crime which is punishable under the provisions of the NDPS Act with imprisonment of five years, the Court cannot grant bail as a matter of routine where the quantity is commercial, in view of bar under Section 37 of the NDPS Act. Granting bail is an exception and denial is a routine. The reasonable ground used in Section 37 of the NDPS Act is not *prima facie*, but it is more than that. Here, I find no reasonable ground to conclude that the petitioner did commit no offence to grant bail.

¹ 2008 (1) ALD crl.899

² AIR 2001 SC 3317

³ (1999) 3 SCC 321

⁴ 2004 (1) JCC 662

Grant of pre-arrest bail under Section 438 IPC is purely the discretion of the Court and such bail can be granted only in exceptional circumstances. The petitioner claims pre-arrest bail as a matter of routine without bringing to the notice of this Court any exceptional circumstance, which entitles him to claim pre-arrest bail under Section 438 IPC.

In view of the law declared by the Apex Court, it is difficult for me to conclude at this stage that the petitioner did commit no offence punishable under Sections 8(c) and 20(b) of the NDPS Act and hence, the petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed.

April 27, 2017.
KTL

M. SATYANARAYANA MURTHY, J

