

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.306 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioner/A3 on bail in Crime No.76 of 2016 of Chinturu Police Station, East Godavari District, registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The case of the prosecution, in brief, is that on 19.11.2016 at about 09.00 AM, the Inspector of Police on receiving credible information about transportation of Ganja, sent a requisition to SDPO and obtained permission to conduct raid in the presence of mediators, other staff and Sub Inspector of Police concerned and at about 10.00 AM reached Ratnapuram Y Junction and found one lorry passing on the road from Maredumilli to Chinturu, wherein A1 to A6 were present. On seeing the police, they tried to skulk away, then the police, apprehend them and on interrogation they disclosed their identity and on verification he found 65 bags containing ganja of 2125.300 kgs and lifted samples in the presence of mediators as per the procedure under the cover of panchanama, in the presence of public servant as mediator. On the strength of panchanama, the police registered a case.

3. The main contention of the petitioner is that he has nothing to do with any offence and he was present in the body

of the lorry at the time of alleged search and seizure as he was travelling in it from Gokavaram to obtain Ayurvedic medicine for his father, who is suffering from paralysis, heart problems and other diseases and prayed to enlarge him on bail.

4. Learned counsel for the petitioner drawn the attention of this Court to the confessional statement of the driver of the lorry that A1-Pilli Bhadra Rao is the owner of the load and also shown another person by name Challagondla Premchand, who engaged the lorry for transporting the ganja, loaded at Maredumilli Forest Area, which is at the distance of 10 kms to Maredumilli Village. The petitioner-Bukya Bhansilal's name is not referred, but he was present in the body of the lorry while transporting Ganja. At this stage, it is difficult to exclude the petitioner for the above offence, when he was present at the time of search and seizure in view of Section 35 and 54 of the NDPS Act. Section 35 of the NDPS Act deals with presumption of culpable mental state. In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Similarly, Section 54 of the NDPS Act deals with presumption of possession of illicit articles. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of any narcotic

drug or psychotropic substance or controlled substance, any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated, any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance and or any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.

5. In such a case, onus of proof is on the petitioner to prove that he is not concerned with the Ganja in view of Sections 35 and 54 of the NDPS Act, which imposes reverse burden on the petitioner. Sections 35 and 54 of the Act give rise to culpable mental state on the part of the accused and also placed burden of proof in this behalf on the accused vide judgment of the Apex Court in **NOOR AGA v. STATE OF PUNJAB**¹.

6. Thus, it is the defence that he has not committed any offence with any mental ailment and when he was present in the lorry carrying narcotic substance i.e. ganja, but it is not a ground to enlarge the petitioner on bail. The total ganja involved in this case is more than 2000 kgs odd, which is a commercial quantity, Section 37 of the NDPS Act is applicable

¹ (2008) 16 SCC 417

to such case. Section 37 of the NDPS Act deals with offences to be cognizable and non-bailable and the said provision reads as hereunder:

1) Notwithstanding anything contained in this sub-section shall affect the power of the High Court under [Section 407](#) of the Code of Criminal Procedure, 1973

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of offences (punishable under [Section 19](#) or [Section 24](#) or [Section 27-A](#) and also for offences involving commercial quantity) shall be released on bail or on his own bond unless:

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2) The limitations on granting of bail specified in Clause (b) of Sub-section (1) are in addition to the limitations under [the Code](#) of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.

7. A similar question that arose before the Apex Court in **State of Madhya Pradesh v Kajad**² wherein, it was 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.

² 2001(7) SCC 673

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 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 the present case on hand, the petitioner was present in the body of the lorry carrying 2000 and odd kgs of Ganja, which is narcotic substance and in such a case, in view of Sections 35 and 54 of the Act till he rebut the presumption under Sections 35 and 54 of the Act and that he has not committed any offence with any mental element and in view of Section 37 of the Act, it is difficult to grant bail to the petitioner at this stage.

10. In view of law declared by the Apex Court, applying the same principle in the above judgment the quantity involved is

2000 and odd kgs and the punishment is more than five years, the material on record *prima facie* show possessing/transporting ganja in contravention of Section 8(c) of the Act, thereby, I find no ground to enlarge the petitioner on bail.

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

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

24.01.2017
kvrn

M.SATYANARAYANA MURTHY,J

