

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 2673 OF 2017

ORDER:

This Criminal Petition under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), is filed to enlarge the petitioners/A1 and A-2 on bail in Crime No.100 of 2016 of Butchaiahpet Police Station, Visakhapatnam District for the offences punishable under Sections 8(c), 20(b)(1) of N.D.P.S. Act.

The case of the prosecution is that these petitioners along with other accused were found in possession of 144 kgs of ganja which is a commercial quantity and the same was seized under the cover of mediators report after lifting samples as per procedure. On the strength of the mediators report, the police registered a case and issued F.I.R. on 17.12.2016.

The contention of the petitioners is that they are in judicial custody since long time and there is no material to conclude that the petitioners did commit the offences referred supra.

As seen from the mediators report and other material on record, the petitioners along with accused were found in possession of 144 kgs of ganja and selling at various places of Hyderabad and Tamilnadu along with others. Therefore, it is a contravention of Section 8(c) of N.D.P.S. Act and are liable for punishment for the offence punishable under Section 20(b)(1) of N.D.P.S. Act.

Section 37 of NDPS Act created an interdict to grant bail for an offence punishable under various provisions of the Act, where a commercial quantity of contraband is involved. According to Section

37(1)(b) of NDPS Act, unless the Court records its satisfaction that the petitioner did commit no offence and that he would not commit no offence again while on bail under Section 439 Cr.P.C in serious offences like the offence punishable under Sections 41(2) & 42(2).

In *State of Madhya Pradesh v. Kajad*¹ the Supreme Court held that the purpose for which the NDPS Act was enacted and the menace of drug trafficking which 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 is an exception under sub clause (ii) of clause (b) of Section 37(1). For granting 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.

In *Maktool Singh v. State of Punjab*² Supreme Court held that for all the offences punishable more than five years, the Court's power to release the accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

In *Customs, New Delhi v. Ahmadalieva Nodira*³ 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

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

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.

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.

In view of the law declared by the Supreme Court in the judgments in Kajad, Maktool Singh, Customs New Delhi cases referred supra and Section 37 of the Act, the petitioners are not entitled to claim bail, as the quantity of ganja involved is commercial quantity and the offence committed by them is punishable with imprisonment for term more than five years and granting bail is an exception and negating bail is a routine, in view of the law declared by the Apex Court in the judgments referred

supra. Hence, on overall consideration of the entire material available on record, I find no ground to enlarge the petitioners on bail.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:06.04.2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.2673 OF 2017

Date:06.04.2017

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