

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.15756 OF 2016

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioner/A9 on bail, who is in judicial custody since 30.07.2016 in connection with Crime No.145 of 2016 of Kadiyam Police Station, East Godavari District, registered for the offences punishable under Section 8(c) read with Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

The case of the prosecution, in brief, is that on 24.07.2016 at about 07.00 PM, the Inspector of Police, Kadiyam Circle, on receiving reliable information about illegal transportation of Ganja by some persons, along with his staff and mediators, proceeded to Jegurpadu Village, Kadiyam Mandal, Near Bridge and started conducting vehicle check. While, so, he found one Santro Car bearing No. AP 05 BY 1499 coming from Samalkot proceeding towards Vijayawada side, on suspicion, the said vehicle was inspected with the help of police constable and found two polythene bags containing Ganja in the dicky of the car, the person in the driver seat disclosed his identity and that one Chowhan alleged to have purchased Ganja and went ahead in Scoda car and further disclosed that one Indica car is coming behind him. The police party also stopped the Santro car and effected arrest of the Kotaguri Venkata Satyanarayana Reddy and again found one lorry and two vans proceeding on the road and stopped Eicher van and on seeing the police, they ran away. The driver of the lorry bearing No. AP 37 X 1599 disclosed his name as Chodavaram Rajesh Kumar and on

verification of the said vehicle, the police found Ganja in plastic packets. Thus, the total Ganja found in the vehicle is 3792 kgs.

The main contention of the petitioner is that based on confessional statement of other accused, he was falsely implicated and nothing was seized from his possession. Therefore, he is no way concerned with the said offence and prayed to enlarge him on bail.

Admittedly, nothing was seized from the petitioner and he was not present at the scene of offence during vehicle check. But it appears from the case diary, A4 is selling Ganja to different persons including the petitioner and they are transporting from different places to different States. Basing on the conduct of the petitioner, the police took him into custody, otherwise, there is no need for the petitioner to enquire about the car as it amounts to contravention of Section 8(c) of the Act punishable under Section 20(b)(ii)(c) of the Act. 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 is more than commercial quantity, which is 3792 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 the punishment prescribed for such offence is five years and thereby, the petitioner is not entitled for bail.

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. 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 has 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

¹ 2001(7) SCC 673

being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

In view of law declared by the Apex Court and applying principle in the above judgment as the quantity involved is 3792 kgs and the provisions under Section 8(c) of the Act, I find no grounds to enlarge the petitioner on bail.

It appears from the material on record that there is Ganja racket within the District of East Godavari, processing and selling of Ganja to various persons. As the petitioner is from Uttar Pradesh, it is difficult to secure his presence during trial in case released on bail. Therefore, taking into consideration the facts and circumstances of the case, including quantity involved in the case, I find that it is not a fit case to enlarge the petitioner on bail. However, the trial Court is directed to decide the matter in accordance with law within two months from the date of receipt of a copy of this order treating the petitioner as under trial prisoner.

With the above direction, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

17.02.2017
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