

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.729 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 petitioner/A.3 on bail in Crime No.26 of 2016 of Maredumilli Police Station, East Godavari District, who allegedly committed the offence punishable under Sections 8(c) read with 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). He is in judicial custody since 12.06.2016.

The case of the prosecution, in brief, is that while the Inspector of Police, attending official work, received reliable information through his source that ganja is being transported in a lorry between 9-00 a.m. to 1-00 p.m. towards Rajahmundry via., Pathakota, Gurthedu, Boduluru Villages by road. He passed such information to the ASP, Rampachodavaram sub-division over phone. He also instructed the Sub-Inspector of police, Maredumilli, to serve notices to MRO, Maredumilli and VROs informing about transportation of ganja from 10 kms., distance to Pathakota Village of East Godavari District to Hyderabad. Later, they inspected the lorry and found three persons proceeding therein. The police, after following necessary procedure, arrested those three persons and seized contra band weighing about 384 kgs., from the cabin of the lorry under the cover of panchanama and the police registered the case against three persons. The panchanama also discloses that A.1- Jadava Ramdas, who was a coolie having studied up to 7th class, had contact with one Babu Rao of Maharashtra State. At about two months back he went to Sandy at Narayana Ghade Village, where he met the said Baburao, who gave

his phone number to A.1 and informed him that he will made a call, if requires assistance. On 10.06.2016 when he was present in his Village, Babu Rao called him over phone to come to Hyderabad for doing some work. On the same day, he went to Hyderabad and met Babu Rao at Dilshuknagar, where the said Babu Rao informed A.1 that he along with one Sivaji, Kangiti Mandal, Medak District, and Satish, brother-in-law of Sivaji purchased 350 kgs., of ganja at East Godavari District, Maredumilli in deep forest i.e. 10 kms., distance to Patakota Village kept the same there and returned back. The ganja will be brought in Sivaji lorry with the help of his driver Ghorl Salmani and A.1 was instructed to go there and bring the ganja and then the said Baburao will give Rs.20,000/- to him. On that, he agreed the deal and informed him that he will go to that forest area along with his friend Vasri Ramdas, the petitioner herein, who knows lorry driving and is a resident of Kanti Mandal, Medak District. Then the said Babu Rao offered to pay Rs.5,000/- to the petitioner. The petitioner agreed the deal and met A.1 at Dilshuknagar, Hyderabad, They both went to a Petrol Bunk, Dilsukhnagar, where he found a lorry bearing No.AP 30 T 8929 with a driver by name Ghorl Salman. These three persons left on the same night at about 9-00 p.m. on the lorry for transporting ganja and they reached Badrachalam and halted for the night. On the next day evening at about 2.00 p.m., they left Bhadrachalam, proceeded towards deep forest via Maredumilli Village traveled about 60 kms and when reached Patakota Village and then proceeded 10 kms and stopped their lorry. On seeing their lorry, one unknown male person came their lorry and asked details. They informed that one Baburao sent them. On such information, he brought the lorry to some distance and handed over 180 packets of

Ganja about 360 kgs., each packet about 2 kgs., which were already packed and ready for transporting.

The only contention of the counsel for the petitioner before this court is that the petitioner is no way concerned with the offence and just he accompanied A.1, who is his friend for shifting the ganja from deep forest, Maredumilli, as requested by Baburao on payment of Rs.5,000/-. Thus he had no intention to transport ganja or indulged in transporting and sale of ganja, and he is languishing in jail since 12.06.2016 and prayed to enlarge the petitioner on bail. It is also contended that Section 50 of the NDPS Act is not complied with as no option was given as required under Section 50 of the NDPS Act.

The learned Public Prosecutor for the State of Andhra Pradesh would contend that huge quantity of ganja i.e. commercial quantity was seized from the cabin of lorry while transporting, it is an offence punishable under Section 8(c) read with 20(b) of the NDPS Act and such person cannot be enlarged on bail and that the compliance of Section 50 of the NDPS Act cannot be insisted, when the ganja was not seized by personal search and prayed for dismissal of the criminal petition.

According to the contention of the learned counsel for the petitioner, the petitioner accompanied A.1 to the forest in lorry, as he knows driving of lorry, on payment of Rs.5,000/-. Thus, it is an undisputed fact that he was present in the lorry at the time of search and seizure of the lorry. According to Section 8 (c) of the NDPS Act, there is a prohibition of certain operations and no person shall cultivate, produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-state, export inter-state, import into India, export from India or transship any narcotic drug or

psychotropic substance. Therefore, transporting ganja in a lorry is a clear violation of Section 8(c) of the NDPS Act. It is the specific contention of the learned counsel for the petitioner that the petitioner has no knowledge about the ganja being transported in the lorry. But this contention cannot be accepted in view of Sections 35 and 54 of the NDPS Act. Section 35 of the NDPS Act permits the court to draw statutory presumption of culpable mental state in any prosecution for an offence under the NDPS 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. Therefore, in view of rebuttable presumption under Section 35 of the Act, until it is proved that the petitioner had no mental state with respect to possession of ganja, the petitioner is deemed to have knowledge and motive regarding transportation of Ganja. Section 54 of the NDPS Act deals with presumption from possession of illicit articles. It shows that 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; 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.

Thus, presumptions under Sections 35 and 54 of the NDPS Act are rebuttable presumptions, the court shall presume that he has knowledge about the transportation of ganja. At this stage, based on the presumption under Sections 35 and 54 of the NDPS Act, the court cannot readily *prima facie* conclude that the material against the petitioner for the offence punishable under Sections 8(c) read with 20(b) of the NDPS Act, since it is a rebuttal presumption and therefore, lack of knowledge or motive etc., is not a ground to enlarge the petitioner on bail and that apart the said Babu Rao agreed to pay Rs.5,000/- to the petitioner for accompanying A.1 for transportation of ganja in the lorry, as the petitioner is also knows driving of the lorry.

Yet another contention raised before this Court that Section 50 of the NDPS Act has not been complied with.

Section 50 of the NDPS Act applies only to personal search and recovery or seizure of contra band. Here the search of contra band was conducted by the inspector of police, but not a personal search. Therefore, for conducting search of cabin of the lorry and seizure of contra band, no option need be given. Hence, it is not a ground to enlarge the petitioner on bail for the alleged non compliance of Section 50 of the NDPS Act.

Time and again, the Apex Court reminded all the courts that for grant of bail, the court shall satisfy that there is a reasonable ground to conclude that the petitioner did commit no offence and that the petitioner would not commit identical offences, while on bail. While granting bail in compliance of Section 37 of the NDPS Act and

without recording such conclusion, the court cannot grant bail in view of Section 37(1) of the Act. Here the total quantum involved in the crime is a commercial quantity and unless the court records its satisfaction regarding the above two requirements, the petitioner cannot be enlarged on bail.

In **STATE OF MADHYA PRADESH v. KAJAD**¹ the Apex Court specifically 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 and exception under sub clause (ii) of clause (b) of Section 37(1) of the NDPS Act. 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 of the NDPS Act 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. Thus, in view of the principle laid down by the Apex Court in the Judgment referred to supra, the court is bound to record its satisfaction that the petitioner did not commit any offence, *prima facie*, to grant bail under Sections 437 and 439 of Cr.P.C. Thus, recording the satisfaction is *sine qua*

¹ AIR 2001 SC 3317

non to grant bail in view of interdict under Section 37 of the NDPS Act.

Therefore, in view of the principle laid down by the Apex Court in **STATE OF MADHYA PRADESH V. KAJAD** referred to supra the petitioner cannot be enlarged on bail, as I find *prima facie* material to conclude that he committed the offence punishable under Section 8(c) read with 20(b) of the NDPS Act and consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

07.02.2017
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