

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 1511 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-5 on bail in Crime No.3 of 2017 of Cheedikada Police Station , Visakhapatnam for the offence under Section 20 (b) (i) (c) r/w 8 (c) of N.D.P.S Act, who is in judicial custody since 13.01.2017.

The case of the prosecution is that on 13.01.2017 on receipt of credible information by S.I. of Police, he along with ASI and staff rushed to BSNL cell tower tar road, Konam village, Cheedikada madnal, secured the mediators at 0600 hours and reached the scene of occurrence and found six persons standing nearby two bags and on seeing the police, they left the two plastic gunny bags and tried to escape from the scene of offence and then ASI and staff, chased them and caught six persons with the assistance of staff, when questioned, they disclosed their identity and on the strength of the said information, they seized two ganja bags under a cover of mediators' report and seized the contraband and lifted the samples as per the procedure and arrested all the accused. The police registered the case against six persons and the petitioner/A-5 is one among the six persons.

The main contention of the petitioner before this Court is that nothing was seized from the possession of the accused and when the two bags were lying on the road side, this petitioner was allegedly implicated in the above crime and he is a student prosecuting diploma in education and thereby he is nothing to do with the offence.

The learned Additional Public Prosecutor opposed the petition on the ground that the quantum involved in the crime is commercial quantity and Section 37 of the NDPS Act will apply to such cases.

No doubt, as per the material on record, more particularly the mediators' report, all the six persons were found transporting ganja, but the bags were kept on road side and on seeing the police, they were waiting for transport. The ganja is in gunny bags. Normally, the persons who are waiting for transportation is not supposed to carry the bags throughout till the transport vehicle reaches. Therefore, they are bound to keep the bags on ground while waiting for transport. Therefore, it is not a ground to conclude prima facie that the petitioner did commit no offence at this stage when the quantity involved in the crime is commercial quantity.

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).

Here, the learned Additional Public Prosecutor opposed the petition on the ground that there is substantial material to conclude that the petitioner is one among the six persons who were found transporting the ganja.

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 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

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

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 crimes under NDPS Act, where commercial quantity is involved.

The normal principle is that, unless the Court comes to a conclusion that there are no reasonable grounds that the petitioner/accused did commit no offence and that there is no apprehension of interference in case the petitioner is enlarged on bail, the Court can enlarge the accused on bail.

While dealing with an application for bail, there is a need to indicate in the order, reasons for *prima facie* concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following

factors also while granting bail, they are:

- 1) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- 2) Reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- 3) *Prima facie* satisfaction of the Court in support of the charge.

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 in all the matters 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 petitioner on bail.

In the present case, there is *prima facie* material against the petitioner to conclude that he along with others did commit the offence punishable under N.D.P.S. Act. Therefore, I am unable to exercise my discretion to grant bail to the petitioner at this stage.

Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. Miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 13.03.2017
ccm

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