

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.7266 OF 2017

ORDER:

Petitioners, who are A2 and A3 in Crime No.20 of 2017 on the file of the Station House Officer, Motugudem Police Station, East Godavari District, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), filed this petition under Sections 437 and 439 Cr.P.C., seeking bail

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor representing the State.

3. The case of the prosecution is that on 06-07-2017, the Station House Officer, Motugudem Police Station, East Godavari District, received reliable information about transportation of ganja. The S.H.O. along with mediators rushed to A.P. Genco Check Post, Motugudem village for the purpose of checking the vehicles. During the course of checking, the S.H.O. intercepted the vehicle bearing No.AP-16-Y-7666 and interrogated the persons, who in turn disclosed their names as Polidasu Uppalaiah (A2) and Panku Ravindrababu (A3). The S.H.O. seized 25 kgs of ganja from the vehicle. The Investigating Agency drew sample of 100 gms from each packet, totalling to 500 gms. After completion of necessary formalities, the case was registered for the offence as stated supra and produced the petitioners before the concerned Court.

4. The petitioners filed CrI.M.P.No.1165 of 2017 on the file of I Addl. District and Sessions Judge, East Godavari, Rajamahendravaram, under Sections 437 and 439 Cr.P.C.

seeking regular bail and the same was dismissed by order, dated 27-07-2017 in view of Section 37 of the Act.

5. The first and foremost contention of the learned counsel for the petitioners is that there is no clarity with regard to vehicle number intercepted by the police officials. To appreciate the contention of the learned counsel for the petitioners, this Court carefully scanned the mediators report, wherein it is mentioned that they intercepted the vehicle bearing No.AP-16-Y-7666. There is no ambiguity with regard to the number of the vehicle intercepted by the police.

6. The second contention of the learned counsel for the petitioners is that the Investigating Agency drew sample of 100 gms from each packet, totalling to 500 gms. It is the further contention of the learned counsel for the petitioners that the ganja seized is below commercial quantity; therefore, the petitioners are entitled for bail.

7. Learned Additional Public Prosecutor representing the State opposed the bail application and submitted that ganja seized from the vehicle of the petitioners is of commercial quantity.

8. A perusal of the record reveals that Investigating Agency seized 25 kgs of ganja. The Court has to take into consideration the total quantity of ganja seized, but not the quantity of ganja drawn for the purpose of sample. A perusal of the record *prima facie* reveals that the ganja seized is a commercial quantity. Therefore, the submission made by the learned counsel for the petitioners is not sustainable either in law or on facts.

9. Learned counsel for the petitioners submitted that the police have not followed the procedure as contemplated under Section 57 of the Act.

10. A perusal of the record reveals that the Investigating Agency forwarded the mediators report on the same day to the higher authorities and the same is reflecting in page 18 of the material papers. A perusal of the record *prima facie* reveals that the Investigating Agency has strictly adhered to the procedure as contemplated under the Act while conducting search and seizure.

11. In order to appreciate the rival contentions, this court is placing reliance on the following decisions:

(i) In **STATE OF M.P. V KAJAD**¹, the Hon'ble apex Court held at paragraph No.5 as follows:

5. ... The purpose for which the Act was enacted and the menace of drug trafficking which it 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 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 being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

(ii) In **COLLECTOR OF CUSTOMS V AHMADALIEVA NODIRA**², the Hon'ble apex Court at paragraph No.7 as follows:

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: 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 satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The

¹ (2001) 7 SCC 673

² (2004) 3 SCC 549

expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(iii) The Hon’ble apex Court reiterated the same principle in **UNION OF INDIA V SANJEEV V. DESHPANDE** ³.

12. As per the principle enunciated in the cases cited supra, the court can grant bail to the persons involved in the cases under the Act, if it satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if the accused is released on bail, he will not involve in similar type of offences.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to grant bail to the petitioners.

14. Accordingly, the Criminal Petition is dismissed.

DATED: 21-08-2017
Hsd

T.SUNIL CHOWDARY, J

³ (2014) 13 SCC 1