

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.8739 of 2017

ORDER:

This criminal petition is filed by the petitioner-accused No.10, under Sections 437 and 439 of Cr.P.C., seeking bail in Crime No.185 of 2017 on the file of the Station House Officer, IV Town Police Station, SPSR Nellore District, for the offences punishable under Section 20(b)(ii)(C) read with 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Sections 3 and 4 of A.P. Gaming Act.

2. The learned counsel for the petitioner submitted that Ganja was not seized from the possession of the petitioner; therefore, no *prima facie* case is made out against the petitioner for the offence punishable under Section 20(b)(ii)(C) read with 8(c) of NDPS Act. He further submitted that the petitioner was falsely implicated in this case; therefore, it is a fit case to grant bail to the petitioner. Per contra, learned Additional Public Prosecutor representing the State submitted that the petitioner is accused No.1 in Crime No.144 of 2017 of Kavali I-Town Police Station, for the offence under Section 20(b)(ii)(C) read with 8(c) of NDPS Act and Sections 3 and 4 of A.P.Gaming Act. He further submitted that the investigation is in progress; therefore, it is not a fit case to grant bail to the petitioner.

3. The case of the prosecution is that on 02.8.2017, at about 07.15 pm, on receiving reliable information about cricket betting in Nellore town, the Inspector of Police informed the same to his superior officers, secured the mediators and proceeded to the shopping complex of Macleans Club, Leelamahahal Road, Nellore,

and found one shop partly opened. The Inspector of Police along with mediators entered into the said shop and found accused Nos.1 to 5 along with a laptop, cell phones and communicators. The further case is that with the help of laptop and communicators, they were conducting cricket betting. The Inspector of Police seized 20.5 Kgs of Ganja, Rs.35,00,000/- cash, two cars, cell phones, two communicators and one laptop from the possession of accused Nos.1 to 5. When questioned, accused No.1 told the Inspector of Police that they received Ganja from the petitioner. The Inspector of Police drew the samples and after completion of necessary formalities, registered the above case.

4. The petitioner filed CrI.M.P.No.369 of 2017 on the file of the Court of I Additional District & Sessions Judge, Nellore, under Section 439 of Cr.P.C., and the same was dismissed on 06.9.2017.

5. A perusal of the record reveals that the petitioner herein is accused No.1 in Crime No.144 of 2017 on the file of the Station House Officer, Kavali I-Town Police Station, registered for the offences under Section 20(b)(ii)(C) read with 8(c) of NDPS Act and Sections 3 and 4 of A.P. Gaming Act. The Inspector of Police seized 20.5 Kgs of Ganja from the possession of accused Nos.1 and 2 in this case. It is the further case of the prosecution that the petitioner supplied Ganja to accused Nos.1 and 2.

6. The learned counsel for the petitioner strenuously submitted that the petitioner cannot be arrayed as accused solely basing on the confession of co-accused. In order to appreciate the said contention, this Court is placing reliance on the decision in **State**

of **U.P. v Amarmani Tripathi**¹, wherein the Hon'ble apex Court held at paragraph Nos.18 and 22 as follows:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi**, (2001) 4 SCC 280, and **Gurcharan Singh v. State (Delhi Admn.)**, (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, (2004) 7 SCC 528: (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598 and **Puran v. Rambilas**, (2001) 6 SCC 338.)”

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable. This Court had negated a somewhat similar contention in **Kalyan Chandra Sarkar** thus: (SCC p. 538, para 19)

“19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he

¹ (2005) 8 SCC 21

submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a *prima facie* case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

As per the principle enunciated in the case cited *supra*, the Court cannot exclude the confession of co-accused while deciding the bail applications.

7. As per the principle enunciated by the Hon’ble apex Court in **State of M.P. v. Kajad**², **Collector of Customs v. Ahmadalieva Nodira**³ and **Union of India v Sanjeev v. Deshpande**⁴, the court can grant bail to the persons allegedly involved in the cases under the NDPS Act, though the contraband seized is a commercial quantity, if the court satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if he is released on bail, he will not involve in similar type of offences. In this case Ganja seized is 20.5 Kgs., which is a commercial quantity. A perusal of the record reveals that the petitioner involved in another case also. The record *prima facie* reveals the role played by the petitioner in the commission of the offence.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited *supra*, this Court is of considered view that it is not a fit case to grant bail to the petitioner.

² (2001) 7 SCC 673

³ (2004) 3 SCC 549

⁴ (2014) 13 SCC 1

9. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

October 09, 2017
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