

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2550 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.108 of 2017 of Nallapadu Police Station, Guntur District, registered for the offences punishable under Section 420 read with 34 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and Section 7 of Essential Commodities Act, 1955, as he is in judicial custody since 09.03.2017.

The main contention of the counsel for the petitioner is that he is working as a Clerk in Ramachandra Rice Mill, Ratnagiri Nagar, Palakaluru, Guntur District, for the past seven years. A.1 is the owner of the rice mill. While so, on 08.03.2017 as per the instructions of A.1, he is verifying stock loaded in the lorry, the police raided the mill without any enquiry and conducting test as to whether rice was found in the lorry is PDS rice, in a routine and mechanical manner, seized the rice bags and in fact the said rice is not PDS rice, more over he is an employee working as a Clerk and he is nothing to do with the offence.

The petitioner filed an application in CrI.M.P. No.1262 of 2017 before the Judicial Magistrate of First Class, Special Mobile Court, Guntur, and the learned Magistrate by his Order dated 14.03.2017 dismissed the application declining to enlarge the petitioner on bail.

When the Magistrate dismissed the application for grant of bail, the petitioner can file an application before the Sessions Court. Instead of approaching the Sessions Court, the petitioner moved to this Court straight away.

The learned counsel for the petitioner contended that this Court is empowered to grant bail and the jurisdiction of the Sessions Court and this Court is concurrent.

There is no doubt that this court is also competent to decide such applications and the petitioner can approach this Court, in view of concurrent jurisdiction conferred on the Sessions Court and this Court under Sections 437 and 439 Cr.P.C., this issue is no more *res integra* in view of the law declared by this Court in **Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and Others¹**, wherein it is held as follows:

“.....it is not obligatory under Section 438 to move the Court of Session in the first instance. It is always open to this Court when an application is filed under Section 438, without first moving the Court of Session, to consider all the circumstances, and if the situation warrants, this Court can direct the party to move the Court of Session. Passing of such an order in consequence of exercise of discretion is different from insisting upon the party to move the Court of Session in the first instance as an inflexible rule of practice. The existing practice of the Registry in returning applications filed under Section 438 on the ground that the Court of Session is not moved in the first instance, is clearly impermissible in law.”

The discretion is conferred on this Court by the same judgment either to direct the petitioner to approach the Sessions Court or to decide the application. In view of the nature of the offence allegedly committed by the petitioner, under Section 7 of Essential Commodities Act, this Court is not inclined to exercise the discretion conferred on it to grant bail, while permitting the petitioner to move an appropriate application before the Sessions Court to enlarge him on bail.

¹ 1993 Cri.L.J. 3508

In the result, the criminal petition is dismissed, giving liberty to the petitioner to file an appropriate application before the Sessions Court.

M.SATYANARAYANA MURTHY, J

31.03.2017
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