

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.7558 of 2017

ORDER:

This petition is filed, under Sections 437 and 439 Cr.P.C., by the petitioner/accused No.6 in Crime No.01 of 2017 on the file of the Station House Officer, Mothugudem Police Station, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The learned counsel for the petitioner submitted that even if the petitioner is released on bail, there is no chance to tamper with the prosecution witnesses as the investigating agency investigated into the matter and filed the charge sheet; therefore, it is a fit case to grant bail to the petitioner.

3. *Per contra*, the learned Additional Public Prosecutor submitted that the petitioner is not entitled for bail in view of Section 37 of the NDPS Act.

4. The facts leading to the filing of the present petition are as follows:

On 10.01.2017 at about 2.00 PM, the Circle Inspector of Police, Chinturu, on receiving reliable information about the illegal transportation of ganja, along with his staff and mediators, proceeded to Y. Junction road, Lakkavaram in order to check the vehicles. In that process, the Inspector of Police observed two vehicles i.e., TATA Indica car bearing No.AP 09 BC 2169 and lorry bearing No.AP 12 V 2851 were proceeding towards Chinturu from Maredumilli side. When the Inspector stopped the vehicles, three

persons who were travelling in those vehicles tried to flee. The police apprehended those three persons, who in turn disclosed their identity as Mohammad Hakeem (A.3), Mohammad Khalidh (A.5) and Bibipet Subhash Babu @ Sailu (petitioner-A.6). The police seized 12 bags of ganja from the TATA Indica Car and 17 bags of ganja from the lorry. Basing on the complaint lodged by the Sub-Inspector of Police and after following the due procedure, the crime was registered for the offence stated above.

5. The petitioner herein filed CrI.P.No.1855 of 2017 seeking regular bail and the same was dismissed by this Court on 09.03.2017 by considering the merits. The petitioner also filed CrI.P.No.3421 of 2017 and the same was dismissed as withdrawn on 18.4.2017.

6. As per the allegations made in the complaint, the police seized 420 kgs. of ganja from the petitioner and others.

7. In order to appreciate the contentions of learned counsel for the petitioner, 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 (i) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the

¹ (2001) 7 SCC 673

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. Ahmadaliev 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 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.

8. As per the principle enunciated in the cases cited supra, the court can grant bail to the persons involved in the cases registered under the NDPS Act, though the contraband seized is a commercial quantity, if the court satisfies 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.

² (2004) 3 SCC 549

³ (2014) 13 SCC 1

9. In the instant case, the Police officials caught hold the petitioner and others while they were transporting 420 Kgs. of ganja, which is a commercial quantity. The material placed before the court is *prima facie* sufficient to arrive at a conclusion that the petitioner has committed the offence punishable under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act. If the petitioner is released on bail, the possibility of involving in similar type of cases cannot be ruled out completely.

10. Taking into consideration the gravity of the offence alleged to have been committed by the petitioner and the scope of Section 37 of the NDPS Act, this Court of the considered view that it is not a fit case to grant bail to the petitioner.

11. Accordingly, the Criminal Petition is dismissed.

Date: 29.08.2017
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T.SUNIL CHOWDARY, J