

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6527 of 2017

ORDER:

This criminal petition is filed by accused No.2, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.78 of 2016-17 on the file of the Station House Officer, Prohibition & Excise Station, Srikalahasti, registered for the offences punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act.

2. The prosecution case, in brief, is that on 04.8.2016, on receiving credible information about storage of Ganja in a house bearing D.No.14-71, Jai Hind Puram, Srikalahasti, the Prohibition & Excise Inspector, Srikalahasti along with staff and mediators went there and seized 55 Kgs of Ganja from the bed-room of the said house. The samples were drawn by following due procedure. After completion of necessary formalities, the present case was registered.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor representing the State.

4. The learned counsel for the petitioner strenuously submitted that the petitioner was falsely implicated by the Excise Officials basing on the confession of accused No.1, which is not admissible under law. In support of his contention, he has drawn the attention of this Court to the decision in **Chepuri Nageswara Rao v State of A.P.**¹. As per the principle enunciated therein, the confessional statement of a co-accused is not a substantive piece of evidence.

¹ 2014 (2) ALT (CrL) 256

5. In order to appreciate the contention of learned counsel for the petitioner, this Court has carefully perused the Case Diary. It is the case of the prosecution that on 04.8.2016, when the Excise Officials raided the house bearing No.14-71, Jai Hind Puram, Srikalahasti, one male person came out of the house and ran away towards bushes. In spite of best efforts, the Excise Officials could not catch-hold the said person. As per the prosecution version, the petitioner stored Ganja at the house bearing No.14-71. A perusal of the Case Diary *prima facie* reveals that the petitioner was present at the house, when the Excise Officials conducted raid. The person, who ran away from the house at the time of raid, is the petitioner or not, will come to light during the course of investigation. Further, accused No.1, in his statement, disclosed the name of the petitioner. The statement of accused No.1 *prima facie* does not fall within the ambit of 'confession'. Therefore, the decision is of no avail to the petitioner.

6. A perusal of the record reveals that the petitioner was arrested in the year 2011 in connection with a Ganja case. The record further reveals that the petitioner is accused No.2 in Crime No.1 of 2015 on the file of the Station House Officer, II Town Police Station, Srikalahasti. In the instant case, the Ganja seized is 55 Kgs, which is a commercial quantity. The record *prima facie* reveals the involvement of the petitioner in commission of the offence.

7. As per the principle enunciated by the Hon'ble apex Court in **State of M.P. v. Kajad², Collector of Customs v. Ahmadalieva Nodira³** and **Union of India v Sanjeev v. Deshpande⁴**, the court can grant bail to the persons allegedly involved in the cases registered 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.

8. Having regard to the facts and circumstances of the case and the principle enunciated in the cases 2 to 4 cited supra, this Court is of the considered view that this is not a fit case to grant anticipatory bail to the petitioner.

9. Accordingly, the criminal petition is dismissed.

T.SUNIL CHOWDARY, J

September 04, 2017
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² (2001) 7 SCC 673

³ (2004) 3 SCC 549

⁴ (2014) 13 SCC 1