

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2231 of 2017

ORDER:

This petition is filed under Sections 437 and 439 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.1 in Crime No.75 of 2016 of Golugonda Police Station, Golugonda, Visakhapatnam District registered for the offences 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), to enlarge him on bail in connection with the above crime as he is in judicial custody since 05.12.2016.

The case of the prosecution, in brief, is that the petitioner herein along with others were found transporting 120 Kgs of Ganja in 6 bags, each bag consists of 20 kgs, worth Rs.2,40,000/- and police seized the contraband after drawing samples therefrom under the cover of mediators report and arrested the accused, remanded him to judicial custody.

Learned counsel for the petitioner contended that the petitioner did commit no offence and he was falsely implicated by the police.

Learned Public Prosecutor (State of Andhra Pradesh) would contend that the material on record is suffice to conclude that the petitioner committed offence punishable under Section 8 (C) read with 20 (b) (ii) (c) of the NDPS Act and found transporting commercial quantity of Ganja, therefore, in view of the embargo contained in Section 37 of NDPS Act the petitioner is not entitled to claim bail as of right in view of the law declared in "**State of**

Madhya Pradesh v. Kajad¹” “Maktool Singh v. State of Punjab²” and “Customs, New Delhi v. Ahmadalieva Nodira³”

When the petitioner is accused of an offence punishable under Section 8 (C) read with 20 (b) (ii) (c) of the NDPS Act and the learned Public Prosecutor opposed the bail application, unless the Court recorded a finding that there is a reasonable ground to conclude that the petitioner did commit no offence and there is no possibility of committing similar offence while the petitioner is on bail, the petitioner cannot be enlarged on bail.

In the present case, the petitioner is also accused in Crime No.169 of 2016 and he was granted bail by order dated 30.11.2016 in Crl.M.P.No.3965 of 2016. Thus, the Sessions Court observed that the petitioner is a habitual offender. In such case, it is difficult to record the satisfaction of the Court as required under Section 37 of NDPS Act that there is no possibility of committing similar offence while the petitioner is on bail.

The material on record would *prima facie* establish that the petitioner committed offence punishable under Section 8 (C) read with 20 (b) (ii) (c) of the NDPS Act.

In this connection, learned Public Prosecutor for the State of Andhra Pradesh relied on the judgment of Apex Court rendered in ***“State of Madhya Pradesh v. Kajad”***, (referred supra) wherein the Apex Court held that the purpose for which the NDPS Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

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 is an exception under sub clause (ii) of clause (b) of Section 37(1). For granting 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.

In “**Maktool Singh v. State of Punjab**” (referred supra) the Supreme Court held that for all the offences punishable more than five years, the Courts power to release the accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

In “**Customs, New Delhi v. Ahmadalieva Nodira**” (referred supra) held that the Court has to keep in mind two conditions i.e, 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 and the expression reasonable grounds means something more than prima facie grounds and it contemplates substantial probable causes for believing that the

accused is not guilty of the alleged offences.

Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Section 437, 438 & 439 are applicable. Besides the application of general provisions of Cr.P.C, certain safeguards are provided in the Act to grant bail, while placing reversal burden in view of Section 35 & 54 of NDPS Act. Therefore, the general principles governing bails under Section 437, 438 & 439 are equally applicable to the bail applications filed for the offences punishable under Sections 8(C) read with Section 20(b)(ii)(C) of NDPS Act for enlarging the accused in the crimes under NDPS Act, where commercial quantity is involved.

In view of the law declared in the above judgments and the material on record, the petitioner was found transporting 120 Kgs of Ganja i.e. commercial quantity and the offence allegedly committed by the petitioner is punishable under Section 20 (b) (ii) (C) of N.D.P.S. Act. Hence, I find no ground to enlarge the petitioner on bail. Consequently, the petition is liable to be dismissed.

In the result, the criminal petitions are dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

19.04.2017
Ksp