

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1165 OF 2017

ORDER:

This petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the petitioner/A.1 in Crime No.47 of 2016 of Chintoor Police Station, East Godavari District, registered for the offence punishable under Section 8(C) read with 20(b)(C) of the Narcotic Drugs and - Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') seeking enlargement on bail in the above crime. He is in judicial custody since 05.08.2016 i.e., from the date of his arrest.

2. The case of the prosecution, in brief, is that the Inspector of Police, Chintoor Circle, on 28.07.2016 afternoon received credible information that an unknown vehicle driver aged about 30 to 40 years, abandoned his Toyota Innova Car bearing No.AP 22 AQ 6033 in front of Munna Internet shop on NH.221, Chatti Y-Junction to Kunta road of Chintoor Mandal. Immediately, the Inspector along his staff went to the place, where the vehicle was abandoned and on verification of the vehicle, they found 100 kgs of Ganja. Basing on the same, the police prepared a panchanama in the presence of the mediators including a public servant. During the course of investigation, the petitioner/A.1 was arrested at 1:00 P.M., on 05.08.2016 and during the course of interrogation, the petitioner/A.1 made a confession that he secured the said Ganja of

100 Kgs for the purpose of transportation; on 27.07.2016 he brought the Ganja in Innova car and he was transporting the same to sell; when he reached Chatti Y-Junction, he suspected that somebody are chasing his car and due to fear, he took diversion of the car near Kunta road, parked the car near internet shop, locked it and went away. Later, he came to the spot and searched his car, then he was arrested by the police.

3. The main grievance of the petitioner is that he was not found in possession of any Ganja, the Ganja was shown to him in the police station by the police after his arrest and search and seizure took place in his absence, therefore, he cannot be made responsible for the alleged offence and he was neither a driver of the car nor owner, thereby he cannot be saddled with any criminal liability for the grave offence punishable under Section 8(C) read with 20(b)(C) of the NDPS Act and prayed to enlarge him on bail.

4. As seen from the mediators' report, on receipt of credible information, police proceeded to Chatti Y-Junction, and found the car parked in front of internet shop and doors of the said car were locked. The police searched the car and found 100 Kgs of Ganja in the presence of mediators and seized the contraband under the cover of panchanama. The basis to rope the petitioner with the offence is his confessional statement. But, the confessional statement drafted at police station, *prima facie*, shows that the petitioner made a confession that he is the person, who parked the

car containing the contraband i.e., Ganja, in front of the internet shop.

5. Learned Public Prosecutor for the State of Andhra Pradesh would contend that the confessional statement made by the petitioner and the statements recorded by the police, more particularly, the statements of owner of the vehicle and the regular driver of the vehicle are suffice to conclude that this petitioner was engaged by LW.9 Anumula Amarnath as temporary driver due to ill-health of regular driver of the said car LW.10-Muppa Ramesh. Based on the statements of Anumula Amarnath and Muppa Ramesh, the petitioner is the person, who transported Ganja in the car. Relying on the statements of these two witnesses, it is difficult for the Court to record that the petitioner is not the person, who committed the offence, *prima facie*, at this stage and prayed to dismiss the petition.

6. Undoubtedly, the petitioner was not found by the police party while transporting Ganja, but on receipt of credible information they proceeded opposite to internet centre and found the vehicle containing 100 Kgs of Ganja and conducted search in the presence of mediators including the Gazetted Officer. The search is in accordance with Section 100 Cr.P.C. As the petitioner was not present at the time of conducting search, no personal search of the petitioner was conducted. Moreover, the statement of Anumula Amarnath would show that he along with his brother was running Sri Vasavi Bar and Restaurant and he purchased a car bearing No.AP 22 AQ 6033 (second hand car) and got transferred its registration and engaged LW.10 Muppa Ramesh as a driver for the last two years. On 25.07.2016 his driver Muppa Ramesh informed that the vehicle is required on hire to go to Bhadrachalam, but due to ill-health,

one Santhakala Srinivas, the petitioner herein, was engaged as driver on payment of Rs.1,500/- as daily wage and batta of Rs.200/- and paid Rs.2,000/- as advance by the petitioner to Amarnath and took the car and later, he came to know that the said Santhakala Srinivas, petitioner herein, parked the car in front of the internet shop along with Ganja. This fact is also supported by the statement of Muppa Ramesh, the regular driver of the car. Thus, the statements of Anumula Amarnath and Muppa Ramesh are suffice that this petitioner took the car from Amarnath through Muppa Ramesh, the regular driver of the car, to go to Bhadrachalam on hire basis and paid Rs.2,000/- to him as in advance. If this fact is accepted, the petitioner alone will be the person responsible for transportation of said Ganja. When he committed such an offence in contravention of Section 8(c), he is *prima facie* liable for punishment subject to proof during trial.

7. When the quantum of Ganja is more than 20 Kgs, the Court cannot enlarge him on bail. When the Public Prosecutor opposes, unless the Court comes to conclusion that there are reasonable grounds to conclude that the petitioner did commit no offence and that the petitioner will not repeat the similar offence while on, bail cannot be granted. The Apex Court in State of Madhya Pradesh v. Kajad¹ laid down the basic twin requirements, which are mandatory to grant bail in a serious offence punishable under Section 8(c) read with 20(b)(ii) NDPS Act, viz., (a) there must be a reasonable ground to conclude that the petitioner did commit no offence (b) the Court has to record its satisfaction that there is no possibility to repeat the similar offence while on bail. Recording satisfaction regarding one of the requirements is not sufficient as they are

¹ AIR 2001 SC 3317

mutually exclusive. What is a reasonable ground depends upon the circumstances of each case and the Apex Court in *State of Madhya Pradesh v. Kajad* (supra), explained what is reasonable ground, and it cannot not be equated with the *prima facie* case. Therefore, by applying principles laid down in the above judgment, I find no ground to record my satisfaction that the petitioner did commit no offence, more particularly, in view of the statements of the owner and the regular driver of the car Anumula Amarnath and Muppa Ramesh, who were examined as LWs.9 and 10. Hence, I find no ground to enlarge the petitioner on bail and consequently, the petition is liable to be dismissed.

8. In the result, the Criminal Petition is dismissed.

Date:13.03.2017
INL

M.SATYANARAYANA MURTHY,J

