

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2564 OF 2018

ORDER:

This criminal petition is filed by the petitioner/A-2 under Section 438 Cr.P.C to direct the Station House Officer, Krishnalanka Police Station, Vijayawada District, to release the petitioner on bail in connection with Crime No.619 of 2017 for the offences punishable under Section 420 IPC.

The case of prosecution is that, on receipt of credible information about transportation of Ganja, the Inspector secured the mediators and other police party and on 04.09.2017 at 1:00 a.m at Varadhi check post, started checking the vehicles and found the present petitioner coming on the Leyland Van bearing No.TN 22 CF 1829. On interception of the van the petitioner tried to skulk away, the police caught hold of him and he confessed that, as per the instructions of his owner Mohammed Ali, he came to Vijayawada with van and met one Murali at Vijayawada and they went to Anakapalli and stationed the vehicle. On phone call, one person came there and changed the number plate of the van instead of original Number TN 22 CF 1829 and fixed the number AP 31 CF 1829 and thereafter loaded ganja. The prosecution claimed that, they found 290 kgs of ganja and accordingly registered the mediators report as Cr.No.619 of 2017 on the file of Krishnalanka Police Station, Vijayawada and issued F.I.R.

The main contention of the learned counsel for the petitioner is that, there are three statements and in the mediators report, there

was no reference of the name of this petitioner and for the first time, the petitioner's name has emerged in third mediation report. Further, the mediators report was drafted on 04.09.2017 at about 1:00 p.m at Vijayawada and a specific allegation was made against this petitioner that this petitioner along with others went to the van sent by one Ramesh and he sent amount for ganja, thereby collected amount while staying at the van and also changed the number plate from TN 22 CF 1829 to AP 31 CF 1829.

Therefore, the statement of the petitioner himself is the basis for registering crime against this petitioner and it is a statement recorded under Section 67(b) of NDPS Act. Further, the total quantity of contraband involved in this crime is 290 kgs and that the Ganja involved is a commercial quantity, the Court has to record its satisfaction that the petitioner is not guilty of any offence on reasonable belief and that he will not commit similar offences while on bail, as required under Section 37(2)(b) of the Act. Unless, these twin requirements are complied with, this Court cannot grant bail to this petitioner as a matter of course.

Here, the total quantity of Ganja involved in this case is 290 kgs and it is commercial quantity. No material is produced to conclude on reasonable ground that the petitioner is not guilty of the offence stated supra. Therefore, it is difficult to record satisfaction of this Court that the petitioner did not commit any offence at this stage. Hence, it is difficult for me to grant bail to this petitioner.

One of the contentions raised by the learned counsel for the petitioner is that, A-1 & A-4 who were involved in this crime were enlarged on bail vide order in Crl.P.No.2885 of 2018 dated 15.03.2018 and placed copy of the order to that effect, to contend that the petitioner is also placed on the same position and when the other accused are enlarged on bail, the petitioner is also entitled to claim bail on the principle of parity. But, the principle of parity cannot be applied for the reason that, in the earlier order in Crl.P.no.2885 of 2018, this Court did not advert to the requirements under Section 37(2)(b) of the Act and totally ignored the requirements under Section 37(2)(b) of the Act and passed the order.

In the recent judgment in **Satpal Singh V. The State Of Punjab**¹ the Supreme Court held that while considering the application for grant of pre-arrest bail for the offence punishable under the provisions of NDPS Act, declined to apply the principle of parity

Therefore, I find no ground to enlarge this petitioner on bail.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:11.04.2018

SP

¹ Crl.A.Nos.462 & 463 of 2018 dated 27.03.2018