

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2825 of 2018

ORDER:

This criminal petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A.3 on bail in Crime No.73 of 2017 of Devarapalli Police Station, Visakhapatnam District, registered for the offences punishable under Sections 20(b)(ii)(c) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), as he is in judicial custody since 10.10.2017.

The case of the prosecution, in brief, is that on receipt of credible information by the Head Constable, about transportation of ganja, on 07.08.2017, the Sub-Inspector of Police, Devarapalli P.S., on the instructions of Inspector of Police, conducted vehicle check at T junction of Marepally and alleged to have stopped TATA pick up van bearing No.AP 31 TD 6549 and alleged to have recovered 480 kgs., of ganja in 14 plastic gunny bags from the possession of A.1 and after following the procedure prescribed, drawn samples from the contraband and arrested A.1. The remaining accused were found absconding from the scene of offence and the petitioner, on his apprehension, was arraigned as A.3 and he was arrested on 10.10.2017 and he is in judicial custody since then.

It is the ground urged by the counsel for the petitioner that the petitioner is a supplier of fruits to various outlets by purchasing the same from farms; and investigating agency illegally arraigned the petitioner as accused and was arrested on 10.10.2017 without following necessary procedure and the law laid down by various courts. Section 37 of the NDPS Act has no application for the present

facts of the case and prayed to enlarge the petitioner on bail as he is languishing in jail since 10.10.2017.

During hearing, Sri.Duvvuri Suryanarayana, learned counsel for the petitioner, contended that the basis for the arrest of the petitioner is confessional statement made by A.1 and the other statements recorded by the police.

Admittedly the petitioner is not arrested on the spot, but it is the allegation that the petitioner was found absconding. On 07.08.2017 at about 3.00 p.m. the vehicle was intercepted and seized ganja from the possession of A.1 and other accused have fled away from the scene of offence, on seeing the police. But based on mediators report and other material, the petitioner was arraigned as accused and the statement of the petitioner dated 10.10.2017 disclosed the involvement of the petitioner himself. There is a reference in the mediators report about involvement of the petitioner in transportation of ganja in contravention of Section 8(c) of the Act. The confessional statement of the petitioner made it clear that he is living by doing agriculture and as he was not getting sufficient income, he along with Shaik Hussain, Ganji Danial, Chinthala Santhosh, Lekkala Seetharam, Ganji Kamaraj started ganja business and on 07.08.2017 they transported ganja in TATA Pick up van bearing No. AP 31 TD 6549. This confession is relevant under Section 53-A of the Act.

Therefore, the confessional statement of the petitioner is additional piece of evidence, *prima facie* connect the petitioner with the offence.

To grant bail to this petitioner, the requirement under Section 37(2) of the NDPS Act is to be complied and the court has to record its

satisfaction. Section 37 of the Act deals with grant of bail and clause (b) says that no court shall grant bail to the accused punishable under Sections 19 or 24 or 27 A and also for offences involving commercial quantity, unless the court satisfied that there is a reasonable ground to found that the accused is not guilty or that he will not commit similar offence while on bail.

In **State of Madhya Pradesh v. Kajad**¹ 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 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**² the Apex 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.

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

In **Customs, New Delhi v. Ahmadalieva Nodira**³ the Apex Court 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.

In view of the law declared by the Apex Court in the judgments referred supra, Section 37 of NDPS Act, unless the Court concludes that the accused is not guilty based on reasonable ground and that there is no possibility of committing similar offences while on bail, where the offences are punishable for more than five years, he shall be enlarged on bail.

The normal principle is that unless the court comes to the conclusion that there are no reasonable grounds that the petitioner/accused did commit no offence and that there is no apprehension of interference in case the petitioner is enlarged on bail, the court can enlarge the accused on bail.

While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing

³ 2004 (1) JCC 662

with application for bail to consider among other circumstances, the following factors also while granting bail, they are:

- 1) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- 2) Reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- 3) Prima facie satisfaction of the court in support of the charge.

Section 67 of NDPS Act deals with power to call for information, etc., and it is defined as any officer referred to in Section 42 who is authorized in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act-

- a) Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;
- b) Require any person to produce or deliver any document or thing useful or relevant to the enquiry;
- c) Examine any person acquainted with the facts and circumstances of the case.

The provisions of NPDS Act is a special enactment. According to Sections 35 and 54 of the NDPS Act, a reversal burden is placed on the accused and the accused has to account for the possession or transportation of ganja and that apart statement of petitioner is relevant under Section 53-A of NDPS Act.

Therefore, the confessional statement recorded under Section 67 of the NDPS Act is admissible and it can be based to record conviction, if, the accused failed to establish that it was obtained on

coercion or duress or under threat, and that the quantity involved in this matter is commercial quantity and in view of the bar under Section 37 of the Act and there is no material to show that the petitioner did commit no offence, this court cannot enlarge the petitioner on bail. Therefore, I find no ground to grant bail.

Accordingly, the criminal petition is dismissed. However, in view of the petitioner languished in jail since 10.10.2017, the I Additional District and Sessions Judge-cum-Special Judge for the trial of cases under NDPS Act, Visakhapatnam, is directed to dispose of the Sessions case, if the case is committed to the Court of Sessions and registered as Sessions case, as expeditiously as possible in any event not later than six months from the date of receipt of a copy of this order.

21.03.2018
BV

M.SATYANARAYANA MURTHY, J

