

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3044 OF 2018

ORDER:

This Criminal Petition, under Sections 437 and 439 of Cr.P.C., is filed by the petitioner/Accused No.1, who has been in judicial custody since 20.01.2018, to enlarge him on bail in Crime No.43 of 2018, pending on the file of the Station House Officer, Shamshabad Prohibition and Excise Police Station, Ranga Reddy District, registered for the offence punishable under Section 8(c) R/w.20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor appearing for the respondent-State, and perused the record.

3. The case of the prosecution, in brief, is that on 20.01.2018, the Excise Officials on reliable information conducted route watch near Aramghar Cross Road, Shivarampally area of Rajendranagar Mandal and seized 8 pills of ecstasy drug and 17 LSD sugar cubes total of 204 grams from accused No.1 and the same was seized under the cover of panchanama in the presence of mediators. On interrogation, it is revealed that accused No.1 secured 8 pills of 1 gram each of ecstasy from accused No.3.

4. During hearing, learned counsel for the petitioner submits that the other accused in this case were already enlarged on bail, *vide* orders of this Court in Criminal Petition Nos.1216 of 2018 and 2248 of 2018, respectively, and finally prayed to release the petitioner on bail by applying the principle of parity.

5. Learned Public Prosecutor opposed grant of bail to the petitioner on the ground of involvement of commercial quantity, which is a bar, under Section 37(2) of the Act, to enlarge the petitioner on bail.

6. As seen from the material on record, accused No.1 is found to be in possession of commercial quantity of contraband in contravention of Section 8(c) of the Act, which is an offence punishable under Section 20(b) of the Act, there is

clear bar under Section 37(2) of the Act, which create interdict on the power of this Court to enlarge the petitioner on bail, unless the Court comes to the conclusion that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, the petitioner cannot be enlarged on bail. This is a precondition to enlarge the petitioner on bail and when he was found to be in possession of commercial quantity of contraband, the Court has to record its satisfaction that the petitioner did not commit any offence and that there is no possibility of committing similar offence while he is on bail. Grant of bail without recording prima-facie finding, in compliance of Section 37 of the Act, is an illegality as held by the Apex Court in ***State of Uttarakhand Vs. Rajesh Kumar Gupta***¹ and ***Union of India Vs. Rathan Malik @ Habal***².

7. In the present facts of the case, from a perusal of the aforesaid two Criminal Petitions, wherein this Court did not record any satisfaction as required under Section 37(2) of the Act but granted bail to the accused therein without advertng to Section 37(2) of the Act and, hence, those orders do not bind this Court. Moreover, the investigation is not yet completed in this case and, therefore, this Court is of the view that that this is not a fit case to enlarge the petitioner on bail in view of the bar under Section 37(2) of the NDPS Act and as such the Petition is liable to be dismissed.

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

In consequence, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

M.SATYANARAYANA MURTHY, J

Date: 19.03.2018.
Dsh

¹ 2007 (1) Crimes (6) SC

² 2009 (2) SCC 624

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

98



23032018

CRIMINAL PETITION No. 3044 OF 2018

Date. 19.03.2018

DSH