

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3045 OF 2018

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused Nos.1 and 2, apprehending their arrest, in Crime No.88/2011-12 on the file of Station House Officer, Prohibition and Excise Police Station, V.Madugula, registered for the offences punishable under Section 20 (b) (ii) C read with 8 (c) of N.D.P.S. Act, to direct the Station House Officer, Prohibition and Excise Police Station, V.Madugula to release them on bail in the event of their arrest in connection with the above crime.

The case of the prosecution, in brief, is that on 03.08.2011 at about 04.00 hours at Gotevagu village in V.Madugula Mandal while raid party noticed two persons standing along with two gunny bags containing contraband, the said two persons left the place and ran towards garden. Immediately, the raid party verified gunny bags and found that they contained 150 kgs of ganja and lifted samples from each bag and sealed them by affixing identification slips containing signature of mediators. Later, on enquiry, the Village Talayari informed that those two persons are the petitioners herein, who are arrayed as accused.

The main contention of the petitioners is that prosecution registered the present crime for statistical purpose and after 8 years they started harassing the petitioners though their names were not disclosed in the mediators report and that it is a fit case grant pre-arrest bail.

Learned Public Prosecutor for the State of Andhra Pradesh

opposed the petition on the ground that the mediators report disclosed the names of the petitioners as Village Talayari identified them as Gollavilli Demudu, s/o Pothuraju and Goutla Ramana, s/o G.Naidu. and in view of the embargo contained in Section 37 of NDPS Act the petitioners are not entitled to claim bail as of right and 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”**

I perused the entire mediators report, it is clear that two persons standing near the contraband seized in this case and on noticing raid party, they ran away towards garden and escaped from the scene of offence, but the Village Talayari, who had acquaintance with the people in the village identified them as Gollavilli Demudu, s/o Pothuraju and Goutla Ramana, s/o G.Naidu, the petitioners herein. Therefore, on the strength of identification of persons, who left the scene of offence, by Village Talayari, the crime was registered against the petitioners.

It is no doubt true that the respondent failed to affect the arrest of the petitioners for the last 7 years, that itself is not a ground to grant pre-arrest bail, that may be due to absconding of the petitioners and they successfully avoiding the arrest of the petitioners.

When the quantity is commercial quantity i.e. 150 kgs of Ganja, the petitioners are not entitled to claim pre-arrest bail, since grant of pre-arrest bail is an exception and unless the Court found certain exceptional circumstances that they did commit no

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

³ 2004 (1) JCC 662

offence *prima facie*, this Court cannot grant pre-arrest bail to the petitioners.

In “***State of Madhya Pradesh v. Kajad***”, (referred supra) 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***” (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) it is 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 petitioners were found transporting 150 Kgs of Ganja i.e. commercial quantity and the offence allegedly committed by the petitioners is punishable under Section 20 (b) (ii) (C) of N.D.P.S. Act.

While dealing with a petition for grant of pre-arrest bail, the Apex Court formulated 10 guidelines in “**Siddharam Satlingappa Mhetre v State of Maharashtra**⁴” which are as follows:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

⁴ AIR 2011 SC 312

- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Apart from the said guidelines, the Court has to strike balance between the fundamental right of liberty guaranteed under the Constitution of India and societal interest while deciding application for grant of pre-arrest bail. Here, the offence allegedly committed by the petitioners is immoral act against the society and the petitioners are absconding, avoiding the arrest by police successfully for the last several years, in such case discretionary relief cannot be granted. Hence, I find no ground to grant pre-arrest bail to the petitioners. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

20.03.2018
Ksp

