

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs.3053 & 3088 of 2018

COMMON ORDER:

These two Criminal Petitions under Sections 437 and 439 of Cr.P.C., are filed by A.3 and A.4 in Crime No.196 of 2017 of Kadiyam Police Station, East Godavari District, registered for the offences under Sections 8 (c) r/w Section 20 (b) (ii) (c) of NDPS Act, 1985.

The petitioners in CRP No.3088 and 3053 of 2018 are A.3 and A.4 respectively. The role played by A.3 is that the ganja was stocked in front of his house by A.2; A.4 was the driver of Scorpio Car bearing No. AP 05 BW 3507 which was found transporting 181.250 kgs of ganja, on interception by the police while the vehicle was proceeding from Yelamanchili to Chittor, which is an offence punishable under Section 8(c) r/w Section 20 (b) (ii) (c) of NDPS Act; Police seized the same under the cover of panchanama and registered a crime against the A.3, A.4 and others and recorded their confessional statements. On the strength of the confession made by A.3 – Penmatsa Konda Babu and A.4 – Kalla Arjuna and Tummalapudi Narsireddy, the police included the names of other accused.

The main contention of the learned counsel for the petitioner/A.3 is that the ganja was stocked in front of the house of A.3 and it is not within his knowledge and nothing was recovered from his possession by the police even after

intercepting the vehicle referred supra on the way to Chittor from Yelamanchi with a load of ganja of 181.250 kgs and therefore, he is no way concerned with the offence. Similarly, the learned counsel for Accused No.4 contended that A.4 was only driving the vehicle engaged by A.1 for driving purpose from Yelamanchi to Chittor and he is not aware of the contents of the bags loaded in the vehicle and, therefore, he cannot be fastened with criminal liability for the offence punishable under Section 8(c) r/w 20 (b) (ii) (c) of NDPS Act and prayed to enlarge the petitioners on bail, as major part of the investigation is completed and the petitioners are in judicial custody since 02.12.2017.

The basis for registering crime against A.3 and A.4 is the confessional statements of various persons and recovery of 181.250 kgs of ganja after intercepting the vehicle bearing No.AP 05 BW 3507. One Tumalapudi Narsireddy, who is one of the accused, in his confessional statement, specifically stated that after loading of ganja in the car, himself along with Kondababu/A3, Majji Ramu started from there and reached near a temple situated in Gandhi Nagaram Village and thereafter, Majji Ramu made a phone call to one Kalla Arjun/A4 and also to one Gopi and, accordingly, both of them appeared over there and thereafter, said Ramu gave an amount of Rs.10,000/- towards advance to Gopi, who is a driver, and also informed him that after delivery of the ganja bags, they will endorse Rs.30,000/- to him. There itself, Ramu stopped accompanying with him and that himself along with Arjun,

Konda Babu, Gopi had tiffin at 09.00 am and started in his scorpio car and while proceeding towards Chittor, initially Gopi drove the car up to Lala Cheruvu centre, Rajahmundry and thereafter they had tea, Arjun started driving the car and when they reached near Burrilanka village, police caught hold of them and found the ganja in their possession. Similarly, P. Konda Babu,/A.3 also stated the same and A.4 are also confessed about transportation of ganja.

The main contention of the learned counsel for the petitioners is that they are not aware about the contents of the bag loaded in the vehicle bearing No.AP 05 BW 3507.

No doubt, the driver is not expected to know the contents of the bag, but there is a presumption under Section 54 of NDPS Act. Section 54 of the NDPS Act reads thus:

Presumption from possession of illicit articles:

In trials it may be presumed that unless and until the contrary is proved that the accused has committed an offence in respect of:

- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled

substance has been manufactured, for the possession of which he fails to account satisfactorily.

Thus, in view of the presumption under Section 54 of NDPC Act, they are presumed to be in conscious possession of ganja and it is for the petitioners to dispel the statutory presumption under Section 54 of NDPS Act by adducing evidence, but at this stage, until it is rebutted, they are presumed to be in conscious possession of the Narcotic Drugs and Psychotropic Substance, in view of Section 54 of the NDPS Act. Therefore, the contention that they are not in conscious possession of Ganja and they are not aware of the contents in the bags loaded in the car is not tenable at this stage and on that ground, the petitioner cannot be enlarged on bail.

As per the material on record, 181.250 kgs of ganja was found in possession of the petitioners while they were transporting the same to Chittor from Yelamanchi and when they found in possession of 181.250 kgs, which is commercial quantity, it is for them to account for the possession of such contraband. But, grant of bail to the accused in the offences involving commercial quantity is not a matter of course, unless the Court comes to the conclusion that there is a reasonable material that the petitioner did commit no offence and are not guilty of any offence and that they will not commit any offence while on bail, the Court cannot grant bail in view of the interdict contained in Section 37 of NDPS Act. Therefore, for granting bail to the petitioners where commercial quantity of contraband

is involved, the Court has to record its satisfaction as to the twin requirements. According to Section 37 (2) of NDPS Act, the duty is cast on the Court to come to conclusion that whether the petitioners committed *prima facie* an offence and that the Court has to weigh probability of his acquittal or conviction and that he did not commit any offence while on bail.

In *State of Madhya v Kajad*¹ wherein the Apex Court held that the purpose for which the NDPS Act was enacted and the menace of drug trafficking which needs to be curtailed 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 of 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 offence for 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

¹ AIR 2001 SC 3317

² (1999) 3 SCC 321

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*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.

Even according to Section 37 of NDPS Act, the general provisions regarding grant of bail under Sections 437, 438 and 439 IPC 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 Sections 35 and 54 of NDPS Act. Therefore, the general principles governing the bails under Section 437, 438 and 439 IPC are equally applicable to the bail application filed for the offences under Section 8(c) read with Section 20 (b) (ii) (c) of NDPS Act.

³ 2004 (1) JCC 662

In the instant case, apart from the fact that the confession statements are relevant under Section 53(A) of NDPS Act, information collected under Section 67 of the Act is *prima facie* sufficient to conclude that there is reasonable ground to establish the guilt of the petitioner and if the confessional statements of the accused and information collected, which are relevant under Special enactment, be taken together along with other material, there is *prima facie* material to conclude that these petitioners was found transporting ganja in the vehicle and they are presumed to be in conscious possession of the contraband, until statutory presumption under Section 54 of the Act is rebutted.

Hence, I find no ground to record my satisfaction as required under Section 37 of the Act to enlarge these petitioners on bail, as the quantity of ganja involved is 181.250 Kgs, which is commercial quantity. Therefore, I do find no ground to enlarge these petitioners on bail and consequently, these two petitions are liable to be dismissed.

In the result, these two Criminal Petitions are dismissed. However, the petitioners are at liberty to renew their request at appropriate stage.

Miscellaneous petitions, if any, pending in both these petitions, shall stand dismissed.

M.Satyanarayana Murthy, J

20th March, 2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NOS.3053 & 3088 of 2018

Dt.20.03.2018

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