

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.3374 of 2018

ORDER

This petition under Sections 437 and 439 of Cr.P.C., is filed by petitioner/A3 to enlarge him on bail in Cr.No.93 of 2017 of Prathipadu Police Station, East Godavari District, registered for the offences punishable under Section 8(c) read with Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'). The petitioner is in judicial custody since 21.05.2017.

2. The case of the prosecution is that on 21.05.2017, the Circle Inspector of Police, Prathipadu, received credible information with regard to illegal transportation of ganja and thereupon, he along with his staff, the Tahsildar, Prathipadu, went to Cold Storage, situated at NH-16, Dharmavaram Village, Prathipadu Mandal, East Godavari District, at about 3.30 PM, they found a car of TATA company bearing No.AP 31 CF 3333, intercepted it, found two persons along with the driver and on enquiry, they confessed that they were transporting 100 Kgs of ganja in three bags from Darakonda of Visakhapatnam District. Thereafter, the Circle Inspector of Police conducted search proceedings and found 100 Kgs of ganja in three bags kept in the car dickey. On the strength of the confessional statement of the accused, a case in Cr.No.93 of 2017 of Prathipadu Police was registered against the accused for the aforesaid offences.

3. The main grievance of petitioner is that he is a native of New Delhi, where he was carrying on business, and in connection with his

business, he came to Prathipadu area and was falsely implicated by the investigating agency in the above crime though he has not committed any offence and therefore, he prayed to enlarge him on bail.

4. During hearing, learned counsel for petitioner contended that a false case has been foisted against the petitioner because for one seizure, the police registered two crimes falsely implicating the petitioner in the second crime and that filing of petition before the Court under Section 267 of Cr.P.C., in Cr.No.92 of 2017 of Prathipadu Police Station, registered for the offence punishable under Section 8(c) read with Section 20(b)(ii)(c) of the Act., is suffice to conclude that the petitioner was arrested in connection with the said crime and not in this crime and therefore, there is any amount of falsity in the prosecution case, prayed to enlarge the petitioner on bail.

5. Learned Public Prosecutor for the State of Andhra Pradesh submits that the petitioner involved in Cr.No.92 of 2017 while he was found transporting ganja of 900 KGs in the lorry and was arrested. But in the second consignment of 100 Kgs of ganja, he was not physically present while transporting the same, but based on the confessional statement of the persons apprehended in Cr.No.92 of 2017, the present crime was registered against the petitioner and that mere filing of such petition is not sufficient to conclude that the petitioner is not guilty of such offences and that he will not commit any offence punishable under the provisions of the Act and prayed for dismissal of the petition.

6. The case of the prosecution as narrated in the mediator's report is that the investigating agency arrested two persons along with the driver of car of TATA company and on interrogation, those two persons disclose about the transportation of ganja by the petitioner and that the statement recorded under Section 67(b) of the Act discloses that the petitioner also committed the offences under the provisions of the Act along with two other persons, who were found transporting 100 Kgs of ganja, which is commercial quantity. But the petitioner pleaded innocence without raising any specific contentions regarding his arrest and filing of application under 267 of Cr.P.C., in Cr.No.92 of 2017 etc.

7. During hearing, though the learned counsel for petitioner raised various contentions based on the miscellaneous petition filed before the Sessions Court for issue of PT warrant etc., the said contention was not raised in the petition. Therefore, there is no basis for such plea in the bail application and more curiously, the Sessions Judge also passed such an order issuing PT warrant against petitioner and others in the other crime and that there are certain irregularities in prosecution of the proceedings pending before the Court in Cr.No.92 of 2017 of the same Police Station registered at about 10.30 AM on the same day. But the present crime was registered after due registration of Cr.No.92 of 2017 i.e., at 5.30 PM. It appears from the record that the petitioner being native of Delhi, came to Prathipadu area and started transporting ganja in two consignments. The first consignment was 900 Kgs and the second consignment was 100 Kgs by transporting in the lorry and the car, respectively. Obviously for different reasons, when the petitioner

was a businessman at Delhi, what is the need to come out to Prathipadu, which is remote area in the District of East Godavari, was not explained anywhere. Therefore, the statement of the other accused in Cr.No.93 of 2017 recorded by the investigating agency invoking under Section 67(b) of the Act, can be used as evidence against the petitioner during trial. But, on the basis of such statement alone, the Court cannot record conviction. If the information collected under Section 67 of the Act is supported by any corroborative evidence, then, the Court can record conviction. The law laid down by the Apex Court is clear on this aspect and at this stage, this Court cannot insist any corroborative evidence while dealing with an application for grant of bail under Sections 437 and 439 of Cr.P.C.

8. In any view of the matter, when the accused in Cr.No.93 of 2017 was found transporting ganja involving commercial quantity and the petitioner being accomplice was transporting ganja illicitly is also liable for the offence though he was not present at the time of interception of the vehicle. Hence, the irregularities committed by the investigating agency in Cr.No.92 of 2017 would not come to the aid of the petitioner when no such ground was raised in the bail petition itself.

9. When commercial quantity of ganja is involved, the Court cannot grant bail on mere asking unless the Court believed on reasonable ground that the petitioner is not guilty of any offence punishable under the provisions of the Act and that he will not commit an identical offence while on bail. In **State of Uttaranchal v. Rajesh Kumar Gupta**¹ and **Union of India v. Rattan Mallik alias**

¹ (2007) 1 Supreme Court Cases 355

Habul², the Supreme Court extensively discussed about scope and consequences failing to adhere Section 37 of NDPS Act and concluded that Section 37 of NDPS Act created an interdict to grant bail for an offence punishable under various provisions of the Act, where a commercial quantity of contraband is involved. According to Section 37(1)(b) of NDPS Act, unless the Court records its satisfaction that the petitioner did commit no offence and that he will not commit similar offence again while on bail under Section 439 Cr.P.C, in serious offences like the offence punishable under the Act.

In the present case, 100 Kgs of ganja was seized and it is a commercial quantity and that too, the petitioner involved earlier in Cr.No.92 of 2017 on the same day. But, in the present case, the petitioner was not arrested initially and later, he was arrested on production of PT warrant before the Court. Therefore, at this stage, it is difficult to conclude that there is a reasonable ground to believe that the petitioner did commit no offence punishable under the provisions of the Act as required under Section 37 of the Act and consequently, the criminal petition is liable to be dismissed.

10. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

19th April, 2018

sj

² (2009) 2 Supreme Court Cases 624