

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3425 OF 2018

ORDER:

This petition is filed, under Section 438 of the Code of Criminal Procedure, 1973, for grant of anticipatory bail to the petitioners-accused Nos. 4 and 5 in C.O.R.No. 241 of 2017 of Prohibition and Excise Station, Nizamabad, registered for the offence 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 of 1985').

2. Heard learned counsel for the petitioners and learned Public Prosecutor (T.S.).

3. The case of the prosecution is that on 25-07-2017 at about 10.30 p.m., on receipt of reliable information about transportation of Ganja, the Prohibition and Excise Inspector along with his staff proceeded to house No. 9-20-1807, Auto Nagar, Nizamabad, and found accused Nos. 1 to 3 in possession of Ganja and that on interrogation, they confessed that the Ganja was supplied by the petitioners and the same was recovered from the possession of accused Nos. 1 to 3 under a cover of seizure panchanama and lifted samples in the presence of mediators.

4. Learned counsel for the petitioners submits that the only basis for enroping the petitioners is the confession made by accused Nos. 1 to 3 and except that, there is nothing on record and no contraband was seized from the possession of the petitioners.

5. As per the material available on record, the total quantity of Ganja seized from the possession of accused Nos. 1 to 3 was 16.830 kilograms which is below the commercial quantity and the basis to enrope the petitioners with the offence is the confession made by accused Nos. 1 to 3. According to Section 67 of the Act, any officer referred to in Section 42 who is authorised 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 provision of this Act, 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; require any person to produce or deliver any document or thing useful or relevant to the enquiry; and examine any person acquainted with the fact and circumstances of the case. Therefore, the information collected under Section 67 of the Act can be used for conducting enquiry and at the same time, Section 53-A (1) of the Act made it clear that a statement made and signed by a person before any officer empowered under Section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains when the person who made the statement is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case,

the Court considers unreasonable; or when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that having regard to the circumstances of the case the statement should be admitted in evidence. Thus, the material collected under Section 67 of the Act is relevant and therefore, registering crime against the petitioners on the basis of confession is in accordance with law.

6. Unless the petitioners *prima facie* establish that they did commit no offence, the Court cannot grant pre-arrest bail since grant of pre-arrest bail is not a matter of course and it is a matter of exception. The offence allegedly committed by the petitioner is serious in nature and the investigation in this case is not yet completed and if for any reason the petitioners are granted pre-arrest bail, they are likely to repeat the same offence since they are the prime accused who allegedly supplied Ganja to accused Nos. 1 to 3.

7. Having regard to the facts of the case and considering the stage of investigation, I find that it is not a fit case to grant pre-arrest bail to the petitioners and therefore the criminal petition is liable to be dismissed.

8. The criminal petition is accordingly dismissed. Pending miscellaneous petitions if any shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

02-04-2018.
JSK