

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3644 OF 2018

ORDER:

This criminal petition is filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'CrPC') to enlarge the petitioners/A.1 & A.2 on bail in Crime No.18 of 2017 of V.Madugula Police Station, Visakhapatnam District, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). He is in judicial custody since 23.02.2017.

The case of the prosecution in brief is that on 23.02.2017 on receipt of reliable information about illegal transportation of ganja, the police conducted vehicle check and found a car, on seeing the police, the persons in the car tried to escape, but the police apprehended them. On verification of the car, the police found Rs.18,000/- cash and 10 gunny bags in a car that on checking the bags they found 200 kgs., of ganja, hence registered the crime and arrested the petitioner and other persons, after following necessary procedure.

The main contention of the petitioners before this Court is that they are residents of Tamil Nadu, they are languishing in jail for last more than a year and since the investigation is completed, requested this Court to enlarge them on bail.

As seen from the allegations made in the complaint, both the accused in the above crime belongs to Tamilnadu state and they were transporting 200 kgs., of ganja in the car and the same was seized under the cover of mediators report. Thus, when commercial quantity is involved in the offence, the court is

required to record its satisfaction as mandated under Section 37(1)(b) of the NDPS Act. Unless the court comes to the conclusion that there is a reasonable belief that the petitioners are not guilty and that the petitioners will not commit similar offence while on bail, the court cannot exercise power under Sections 437 and 439 of CrPC.

In **STATE OF MADHYA PRADESH v. KAJAD**¹ the Apex Court specifically 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 and exception under sub clause (ii) of clause (b) of Section 37(1) of the NDPS Act. For granting the 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. It is further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for. Thus, in view of the principle laid down by the Apex Court in the Judgment referred to supra, the

¹ AIR 2001 SC 3317

court is bound to record its satisfaction that the petitioner did not commit any offence, *prima facie*, to grant bail under Sections 437 and 439 of Cr.P.C. Thus, recording the satisfaction is *sine qua non* to grant bail in view of interdict under Section 37 of the NDPS Act.

In view of the law declared by the Apex Court in **Kajad** case referred supra, it is obligatory on the part of the Court to comply the requirement under Section 37(1)(b) of NDPS Act and if the court found that there is material against the petitioner, the Court cannot enlarge the petitioners on bail.

The other contention of the counsel for the petitioners is that the petitioners are languishing in jail since 23.02.2017.

In **CHENNA BOYANNA KRISHNA YADAV -VS- STATE OF MAHARASHTRA AND ANOTHER**² the Apex Court made it clear that when gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail. The same principle is reiterated in **RAJESH RANJAN YADAV @ PAPPU YADAV VS CBI THROUGH ITS DIRECTOR**³ while deciding the case it was held that it is one of the considerations in deciding whether to grant bail to an accused or not is, whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, and at the same time a balance has to be struck between the right to

² (2007) 1 SCC 242

³ (2007) 1 SCC 70

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personal liberty guaranteed under Article 21 of the constitution of India and the interest of society, as no right can be absolute.

Therefore, languishing in jail for a longer period is not a ground to grant bail. Hence, I find no ground to enlarge the petitioners on bail.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 13.04.2018
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