THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3922 OF 2018

ORDER:

This criminal petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A.4 on bail in F.No.DRI/HZU/VJRU/48/ ENQ-1(INT-NIL)/2018 on the file of Directorate of Revenue Intelligence, Regional Unit, Vijayawada, Andhra Pradesh, who allegedly committed the offences punishable under Sections 20, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

The petitioner is in judicial custody since 08.01.2018

The case of the prosecution is that on 25.10.2017 at 16.30 hours, on reliable information received, the respondent along with independent witnesses assembled at NH-5, Opposite Bethestha Church, (segment between Diwancheruvu and 4th Bridge Count), Rajamahendravaram, East Godavari District had specific intelligence to the effect that the Cannabis also known as ganja is illicitly being transported by secreting and concealing the same in a Cargo vehicle of make Eicher bearing registration No. AP 28 X 3569 and when the said vehicle was coming from the direction of Tuni and moving towards the direction of Vijayawada and intercepted the vehicle through Bobbili Balaji-A6, the driver of the vehicle along with co-passengers Vollu Srinu-A7 and they admitted that they were carrying consignment of cannibis also known as ganja and they further stated that they were taking the vehicle up to Nizamabad and that the vehicle is being escorted by Laveti

Thallibabu and others in a Swift Dezire car bearing registration No.AP 29 AL 2592. The Officers of DRI asked the persons traveling in the said car, whether they were escorting the cargo, for which one person in the car admitted that they were escorting the cargo vehicle. A6 and A7 admitted that there was a false chamber in the cargo vehicle, wherein ganja was secreted. The officers found 280 packets in the secret chamber of the cargo containing 594.62 kgs. The officials of DRI seized the ganja in the presence of mediators under cover of panchanama. On the basis of panchaname, the crime was registered and issued FIR.

The main contention of the petitioner is that he was falsely implicated in the crime and that he was not escorting the vehicle in swift desire car and that nothing was seized from his possession. Therefore, the petitioner is liable to be enlarged on bail.

Learned counsel for the petitioner, during hearing, reiterated the contentions raised in the petition.

Whereas, learned Special Public Prosecutor appearing for the respondent opposed the petition on the ground that the petitioner also involved in the offence and the information called for under Section 67 of the NDPS Act, clearly discloses that the petitioner participated in the crime i.e. transportation of commercial quantity of ganja and thus, committed offence, *prima facie* and that too this Court cannot exercise to enlarge the petitioner on bail unless records its satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of such offence and 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 in view of bar

under Section 37 of the NDPS Act and prayed to dismiss the criminal petition.

As seen from the material on record, the petitioner along with others piloting the vehicle carrying 594.62 kgs ganja and that the statement recorded by DRI Officials under Section 67(b) of the NDPS Act, discloses that the petitioner is piloting the vehicle transporting ganja containing commercial quantity. The information collected under Section 67 of NDPS Act can be used as *prima facie* evidence at the time of considering the bail application. Therefore, the material available on record *prima facie* shows that the petitioner is one of the persons, who are piloting the vehicle transporting ganja and it would fall within Section 29 of NDPS Act. Section 29 of the NDPS Act deals with punishment for abetment and criminal conspiracy.—(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence. (2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which. (a) would constitute an offence if committed within India; or (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to

constitute it an offence punishable under this Chapter, if committed within India.

Where a person possessing illicit contraband does not carry it himself but entrusts it to some other person for carriage in a car and that person carries the contraband knowingly, then the driver of the car would be the person who transports the contraband and person who directs him to do so would be the abettor of the offence of transporting as held in **Narvirchand And Ors. vs The State**[1]**.** If the principle laid down in the above judgment is applied, the act of piloting the vehicle is deemed to have been abated the offence punishable under Section 107 of the Indian Penal Code and thus, the offence punishable under Section 29 of NDPS Act. Therefore, the act of the petitioner i.e. piloting cargo was seized from the petitioner, *prima facie,* punishable under Section 28 and 29 of the NDPS Act, is liable for punishment along with other accused.

Moreover, in **State of Madhya Pradesh v Kajad**[2] the Apex Court held that when a person who indulged in an offence punishable for more than five years of imprisonment under the provisions of the Act cannot be released generally on bail. The Supreme Court in para 5 of the judgment discussed the scope of Section 37 of the Act and concluded that the purpose for which the 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

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[1] 1952 Crl.L.J 246
[2] 2001(7) SCC 673

the rule and its grant is an exception under sub clause (ii) of clause (b) of Section 37(1). 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 has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 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.

Here I find sufficient material *prima facie* to conclude that the petitioner committed such offence and hence, it is not a fit case to enlarge the petitioner on bail.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

12.04.2018
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