

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4351 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 in Crime No.702 of 2017 of Patamata Police Station, Vijayawada City, 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 14.10.2017.

The case of the prosecution, in brief, is that on receipt of reliable information on 14.10.2017 the Inspector of Police along with mediators and staff reached Ramavarappadu Railway Station, at 5.00 P.M. and found the petitioner/ A.4 in possession of bag and he tried to skulk away, but he was apprehended and on interrogation he informed that the bag contains ganja and he voluntarily confessed before the Tahasildar-cum-Executive Magistrate, Vijayawada Rural that the bag contains 2 kgs., of ganja which was found in possession and he already sold 30 kgs., to the other accused, thus the petitioner selling or trading ganja, and therefore, by following the necessary procedure, lifted the samples and seized contraband under the cover of mediators report, on the basis of mediators report, the crime was registered and issued F.I.R. for the offence punishable under Sections referred above.

The only contention of the counsel for the petitioner before this Court is that he was found in possession of 2 kgs., of ganja and it is small quantity, in fact it is not the case from the contents

of charge sheet and that the total ganja found in possession of all the accused cumulatively was more than 800 kgs., of ganja.

Learned counsel for the petitioner contended that when the investigation is completed, question of interference of the petitioner with the investigation and fleeing away from justice would not arise and that he was found in possession of 2 kgs., of ganja, and thereby Section 37 of the NDPS Act has no application and prayed to enlarge the petitioner on bail.

The petitioner, who is A.4 in the above crime filed an application in CrI.P.No.215 of 2018 which was dismissed by this Court by Order dated 04.01.2018 on various grounds and one of the grounds for dismissal of earlier criminal petition is that he is a native of Tamil Nadu State and there is likelihood of jumping from bail.

The contention of the counsel for the petitioner is that remand of the petitioner is contrary to law and there are changed circumstances to file the present criminal petition that on 15.02.2018 the police filed charge sheet i.e. subsequent to the dismissal of earlier bail application, and thus there is a gap of 17 days between dismissal of earlier bail application and filing of charge sheet, it is substantial major changed circumstance in the investigation and prayed to enlarge the petitioner on bail.

The Public Prosecutor (AP) opposed the petition on two grounds the first ground is that in the absence of any changed circumstances in the investigation, after dismissal of earlier bail application, the petition is not maintainable and the other ground is that he is a native of Tamil Nadu State, he was trading Ganja

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and in case he is enlarged on bail, it is difficult to complete the trial of the case and prayed for dismissal of the petition.

Admittedly, the petitioner filed bail application in CrI.P.No.215 of 2018 which was dismissed by this Court by order dated 04.01.2018 holding that the petitioner is not entitled to claim bail, since he hailed from Tamil Nadu State and there is every chance of fleeing away from justice. After dismissal of the earlier bail application, the only changed circumstance is filing of the charge sheet on 15.02.2018 that is after more than one month 20 days from the date of dismissal of the earlier application.

In the offence punishable under the provisions of NDPS Act, the investigation will be completed on the preparation of the mediators report, search and seizure etc. except sending of the samples drawn from the contra band and after receipt of FSL report only, the prosecution filed charge sheet against the petitioner. Therefore, by the date of dismissal of earlier application, major part of the investigation was completed except receipt of FSL report, and filing of charge sheet is not a substantial change of circumstance in the investigation. Time and again, the Apex Court held in various judgments that unless there are changed circumstances, after dismissal of earlier bail application, the Court cannot entertain bail application basing on any additional material produced before the Court as held by the Apex Court in **STATE OF TAMIL NADU v. S.A. RAJA**¹.

¹ (2005) 8 Supreme Court Cases 380

The other ground is that the alleged possession of ganja is only 2 kgs., but as seen from the allegations in the charge sheet, the total ganja seized from the possession of the accused persons, who were engaged by A.1, is more than 800 kgs., and in such case, the bar under Section 37 of the NDPS Act will come into operation. Unless the court concludes that the petitioner is not guilty and that he will not commit any offence while on bail, the court cannot grant bail in view of bar under Section 37 of the NDPS Act.

In **STATE OF MADHYA PRADESH v. KAJAD**² 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

² AIR 2001 SC 3317

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 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 petitioner on bail.

The other contention of the counsel for the petitioner is that the petitioner is languishing in jail since 14.10.2017.

In **CHENNA BOYANNA KRISHNA YADAV -VS- STATE OF MAHARASHTRA AND ANOTHER**³ 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**⁴ 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

³ (2007) 1 SCC 242

⁴ (2007) 1 SCC 70

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at the same time a balance has to be struck between the right to personal liberty guaranteed under Article 21 of the constitution of India and the interest of society, as no right can be absolute.

Hence, I find that it is not a fit case to enlarge the petitioner at this stage. However, the Metropolitan Sessions Judge, Vijayawada, is directed to dispose of S.C. No.114 of 2018 as expeditiously as possible in any event not later than 6 months from the date of receipt of a copy of this order.

With the above direction, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 27.04.2018
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