

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4752 of 2018

ORDER:

This Criminal Petition is filed under Sections 437 and 439 Cr.P.C to enlarge the petitioners/A3 and A4, who are in judicial custody since 19.07.2017, on bail in Crime No.68 of 2017 and now it is pending before the Special Judge for trial of Cases under NDPS Act-cum-I Additional District and Sessions Judge, Vizianagaram in S.C.No.3 of 2018, registered for the offence punishable under Section 8(c) read with 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

The case of the prosecution in brief is that on 18.07.2017 at about 12.30 hours on receipt of reliable information, the Sub-Inspector of Police, Jami Police Station, Vizianagaram made an entry in the general dairy. Thereupon, he along with Vagala Prasad, Vagala Umasankar Thirumala Trinath Rao and other police constables Malleswara Rao, B.Krishna Rao, D.Demudu, K.Krishna and I.Satish Kumar went to Chinthada Village of Jami Mandal, and on seeing them, some unknown persons escaped in a Bolero van and motorcycle. On suspicion, the Sub Inspector of Police along with staff chased and caught hold of four persons and one motor cycle with gunny bag. On verification of the gunny bag in the presence of mediators, found ganja and on interrogation, they disclosed that they are selling ganja. Thus, the petitioners found in possession of ganja of more than commercial quantity and thereby the same was seized in the presence of mediators under cover of mediators' report, after following necessary procedure and lifted samples. On the strength of the report, the above crime was registered.

It is the contention of the petitioners that they are in judicial custody since long time and that the petitioners did not commit any offence and the material available on record does not disclose commission of offence and prayed to grant bail.

Whereas, learned Additional Public Prosecutor opposed the petition and the total quantity of ganja involved in this case is 840 kgs and that too information collected under Section 67(b) of NDPS Act is sufficient to conclude that the petitioners along with others found in possession of ganja in contravention of Section 8(c) of NDPS Act and there is *prima facie* material to conclude that the petitioners committed offence and prayed to dismiss the petition.

As per the material available on record, the petitioners were found in possession of ganja and transporting the same in commercial quantity. When the petitioners were found in possession of commercial quantity, presumption is that they are in conscious position in possessing and transportation of ganja. Therefore, the petitioners allegedly committed the offence. The petitioners involved in an offence punishable under Section 8(c) read with 20(b)(ii) of the NDPS Act, it is obligatory on the part of the Court to record satisfaction that there is reasonable ground to believe that the petitioners are not guilty of the offence and that they will not commit offence while on bail. Recording of such satisfaction is mandatory in view of law declared by the Apex Court in **State of Madhya Pradesh v Kajad**¹ and it was 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

¹ 2001(7) SCC 673

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 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.

In **State of Uttaranchal vs. Rajesh Kumar Gupta**², and **Union of India v. Rattan Mallik @ Habul**³ the Apex Court specifically held that recording of satisfaction that accused is not guilty of offence and that he is not likely to commit any offence while on bail is *sine qua non* for granting bail.

In the present case, at this stage, it is difficult to conclude that there is reasonable ground to believe that the petitioners are not guilty of the offence and apart from that the material collected under Section 67(b) of NDPS Act also

² 2007 (1) Crimes 6 (SC)

³ (2009) 2 SCC 624

supports the case of the prosecution. Though such information collected under Section 67(b) of NDPS Act is not sufficient to convict the accused, unless it is corroborated by any other independent evidence and the accused can be convicted at the end of trial. Therefore, I find no ground to enlarge the petitioners on bail and that too, the petitioners involved in another crime i.e. Crime No.57 of 2997, which is another strong circumstances to conclude that there is possibility of committing similar offence while on bail.

In the result, the criminal petition is dismissed.

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

02.05.2018
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A circular green seal of the High Court of Telangana, Hyderabad. The outer ring contains the text 'HIGH COURT OF JUDICATURE ANDHRA PRADESH' at the top and 'FOR THE STATE OF TELANGANA' at the bottom. Inside this is another ring with 'HYDERABAD' at the top and 'JUDICIAL OFFICE' at the bottom. The center features a red emblem of the Government of India, with the motto 'सत्यमेव जयते' (Satyameva Jayate) in Devanagari script below it.

M.SATYANARAYANA MURTHY,J