

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4951 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 by the petitioner to release him on bail in Crime No.27 of 2018 of Kanchanbagh Police Station, Hyderabad, registered for the offence punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

The petitioner is in judicial custody since 17.02.2018.

The case of the prosecution in brief is that on 17.02.2018 at 7.30 a.m. on reliable information the Inspector of Police along with his staff rushed near to Sai Baba Temple, Champapet, Hyderabad, where A.1 to A.4 were found shifting the gunny bags from Renault Logan Car bearing No.AP 07 CN 0837 to Skoda car bearing No.AP 10 BB 8777, and A.5 to A.11 waiting with airbags with them and on seeing the police, the accused persons skulk away, but the police apprehended the accused and on enquiry they informed the possession of ganja and confessed before the gazetted officer and mediators that on the request of A.1, they brought ganja from Agency area of Vizag, later the police seized the ganja as detailed below:

a) 30 packets of ganja each weighing about 2 kgs., one skoda car No.AP 10 bb 8777 from the possession of A.1

b) 20 packet of ganja weighing about 2 kgs., each and one Logan car No.AP 07 CN 0837 and one Cell Phone from the possession of a.2.

c) one cell phone from the possession of A.3

d) one cell phone from the possession of A.4

e) one packet of ganja weighing about 10 kg along with air bag and one cell phone from the possession of A.5

f) one packet of ganja weighing about 10 kg. along with air bag and one cell phone from the possession of A.6,

g) one packet of ganja weighing about 10 kg. along with air bag and one cell phone from the possession of A.7,

h) one packet of ganja weighing about 10 kg along with air bag and one cell phone from the possession of A.8

i) one packet of ganja weighing about 10 kg along with air bag and one cell phone from the possession of A.9

j) Packet of ganja weighing about 10 kg along with air bag from the possession of A.10

k) one packet of ganja weighing about 10 kg along with air bag and one cell phone from the possession of A.11.

Based on the mediators report, the police registered the crime and issued F.I.R.

The counsel for the petitioner contended that the petitioner is only driver, running cab for transportation of passengers. Therefore, the petitioner is no way concerned with the passengers, who are in possession of ganja and consequently the petitioner is not liable for punishment for the offence under the provisions of NDPS Act and when the petitioner is innocent of any offence, he is entitled to be enlarged on bail.

The Public Prosecutor (A.P.) contended that quantity involved in this offence is more than commercial quantity and unless the court records its satisfaction that there is a reasonable belief that the petitioner is not guilty of any offence and that the petitioner will not commit any crime while on bail as required under Section 37(1)(b) of the NDPS Act, the court cannot grant bail and prayed for dismissal of the petition.

As seen from the material on record, the petitioner was the driver of Skoda car and when A.1 to A.3 boarded the car holding the air bags in possession and in the bags found more than 30 kgs., of ganja. The total ganja being transported in the vehicle along with passengers A.1 to A.3 is a commercial quantity.

Section 8(c) prohibits production, manufacturing, possessing, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation.

In the present case, the petitioner being the driver transporting the passengers along with ganja, but his contention is that he has no knowledge about the contents of the bags. At this stage it is difficult to conclude that he has no knowledge

about the possession of ganja with A.1 to A.3, since it is a disputed question of fact, but however transportation of ganja in contravention of Section 8(c) read with 20(b)(ii)(c) of the NDPS Act is an offence. When the petitioner along with other accused were transporting commercial quantity of ganja in the Renault Logan car, unless the court records its satisfaction as required under Section 37 of the NDPS Act, the petitioner cannot be enlarged on bail.

It is the contention of the counsel for the petitioner that the petitioner did not involve in any other crime earlier and that there are reasonable grounds to conclude that the petitioner is not guilty of any offence, but this contention cannot be accepted at this stage since the petitioner, being the driver of Renault Logan was found transporting ganja along with other accused, and therefore, it is difficult for me to record satisfaction as required under Section 37 of the NDPS Act.

Apart from that the material produced before this Court that is statement of mediators recorded under Section 67(b) of the NDPS Act lending support to the case of prosecution, which can be taken into consideration as further information collected by the investigating agency exercising power under Section 67 of the NDPS Act and based on such statement recorded under Section 67(b) of the NDPS Act, the court may record conviction at the end of trial, if it is corroborated by any independent testimony.

But, at this stage, it is difficult to conclude that the statement recorded under Section 67(b) of the NDPS Act is not

supported by any corroborative evidence and to record my satisfaction under Section 37 of the Act. 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 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.

¹ AIR 2001 SC 3317

In **Maktool Singh v. State of Punjab**² the Apex Court held that for all the offences punishable more than five years, the Courts power to release the accused on bail during the period before conviction has been, thus, drastically curtailed by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty for such offences.

In **Customs, New Delhi v. Ahmadalieva Nodira**³ the Apex Court held that the Court has to keep in mind two conditions i.e, the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail, the conditions are cumulative and not alternative, the satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds and the expression reasonable grounds means something more than prima facie grounds and it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences.

In view of the law declared by the Apex Court, I find no ground to release the petitioner on bail and the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

02.05.2018
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² (1999) 3 SCC 321

³ 2004 (1) JCC 662