

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

CRIMINAL PETITION No.2232 of 2019

O R D E R

The petitioner is A.1 in Sessions Case No.96 of 2017 on the file of the learned Metropolitan Sessions Judge, Cyberabad-cum-I Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. He is charged with offences punishable under Sections 22(c), 25, 27-A, 28, 29 and 32-B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), and Section 464 IPC. By way of this petition filed under Sections 437 and 439 CrPC, he seeks regular bail.

It is the case of the prosecution that A.2 and A.3 in Sessions Case No.96 of 2017 were apprehended with 231.015 Kgs of Amphetamine, a psychotropic substance, in their possession. The role of the petitioner-A.1 in the manufacture and trafficking of this psychotropic substance came to light during the interrogation of A.2 and A.3. The petitioner-A.1 was accordingly served with summons under Section 67 of the NDPS Act and he appeared before the Narcotics Control Bureau, Hyderabad (NCB), on 03.10.2016. Based on the voluntary statement allegedly made by him on 04.10.2016, the petitioner-A.1 was arrested on the said day. Thereafter, on 26.10.2016, an independent source informed the NCB that a house was taken on rent by the petitioner-A.1 at Vayupuri in Sainikpuri, Secunderabad, and a team of officers from the NCB proceeded to this rented accommodation of the petitioner-A.1 and conducted search and seizure operations in accordance with the due procedure. In the course thereof, 9.1 Kgs of Amphetamine was seized along with various items, which were indicative of manufacture of this psychotropic substance having been undertaken in the said rented accommodation. This, broadly, was the foundation of the case laid against the petitioner-A.1.

Sri V.Raghunath, learned counsel for the petitioner-A.1, would point out that the petitioner-A.1 has been in custody since 04.10.2016 and assert that as the charge-sheet was filed in June, 2017, there is no reason to continue his detention. He would also point out that the so-called voluntary confessional statement made by the petitioner-A.1 was retracted thereafter and there was no credible information at this stage to link him with the charged offences. As regards the seizure of over 9 Kgs of Amphetamine from the rented premises of the petitioner-A.1, the learned counsel would contend that no value can be attached to the search and seizure operations, as the petitioner-A.1 was not taken to the said premises during these operations and the only witnesses to the so-called seizure of the Amphetamine were some random persons. The learned counsel would further point out that A.3 in this case has already been granted bail and assert that this is a fit case for grant of relief to the petitioner-A.1 on the same lines.

Opposing the bail petition, Sri V.Gopala Krishna Gokhale, learned Special Public Prosecutor for the NCB, would point out that even if the seizure of Amphetamine from the possession of A.2 and A.3 is not taken into account, the quantity seized from the rented premises of the petitioner-A.1 was far in excess of the commercial quantity, as prescribed under the NDPS Act and the notifications issued thereunder. He would state that Section 37 of the NDPS Act prescribes further limitations in addition to those set out in the Code of Criminal Procedure, 1973, in relation to grant of bail and therefore, the case on hand has to be dealt with accordingly. He would also point out that there are no changed circumstances since the dismissal of the petitioner-A.1's earlier bail petition on 19.11.2018, warranting grant of bail to him at this stage.

It may be noted that as per the Notification issued, *vide* S.O.1055 (E) dated 19.10.2001, in so far as Amphetamine is concerned, the commercial quantity is stipulated as 50 grams. There is no dispute as to the petitioner-A.1 having rented the premises at Vayupuri where over 9 Kgs of Amphetamine was allegedly seized. The validity of the seizure operations would have to be tested during trial. At this stage, irrespective of the larger quantity allegedly seized from the possession of A.2 and A.3 and their confessions, implicating the petitioner-A.1, this independent evidence, *prima facie*, indicates sufficient material to maintain a case against him. Be it noted that the petitioner-A.1 is charged with offences under various provisions of the NDPS Act, including Section 27A thereof, relating to illicit trafficking of psychotropic substances. That apart, he is also charged with offences involving far in excess of the prescribed commercial quantity of Amphetamine. In consequence, Section 37(1)(b) of the NDPS Act would stand attracted. This provision reads as under:

‘37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) the limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.'

In terms of the aforesaid provision, an accused cannot be released on bail unless the Court is satisfied that there are reasonable grounds to believe that he is not guilty of the offence and that he is not likely to commit any offence while on bail.

Dealing with the contours of this provision in *INTELLIGENCE OFFICER, NORCOTICS C. BUREAU V/ s. SAMBHU SONKAR*¹, the Supreme Court observed thus:

'5. The scheme of section 37 reveals that the exercise of the power to grant bail by the Special Judge is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in negative in prescribing the enlargement of bail of any person accused of commission of an offence under the Act unless two conditions are satisfied. The first condition is that prosecution must be given an opportunity to oppose the application and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. As per the mandate of Section 37, no person accused of an offence punishable for a term of imprisonment of 5 years or more under the Act can be released on bail unless the conditions mentioned in sub-clauses (i) and (ii) of Clause (b) are satisfied. Pre-condition for application of clause (b) would be that offence is punishable for a term of imprisonment of 5 years or more. Plain reading of the above said clause makes it clear that in case where the person is accused of an offence punishable for a term of imprisonment of 5 years then he cannot be released unless the conditions mentioned therein are satisfied.....'

Earlier, in *MAKTOOL SINGH V/ s. STATE OF PUNJAB*², the Supreme Court considered Section 37 apropos the scheme of the NDPS Act and held thus:

'The only offences exempted from the purview of the aforesaid rigours on the bail provisions are those under Sections 26 and 27 of

¹ AIR 2001 SC 830 : (2001) 2 SCC 562

² (1999) 3 SCC 321

the Act. The former is punishable up to a maximum imprisonment for three years and the latter up to a maximum imprisonment for one year. For all other offences, the court's power to release an 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 of such offence.'

Thereafter, in *THANA SINGH V/s. CENTRAL BUREAU OF NARCOTICS*³, the Supreme Court issued various directions in relation to proceedings under the NDPS Act. Significantly, these directions were issued after taking note of the fact that the edict in *SUPREME COURT LEGAL AID COMMITTEE REPRESENTING UNDERTRIAL PRISONERS V/s. UNION OF INDIA*⁴ that an undertrial accused, charged with an offence punishable with imprisonment of ten years, should be released on bail if he has been in jail for not less than five years, would have constrained applicability to cases under the NDPS Act in the light of Section 37 thereof. It was also noted that in *ACHINT NAVINBHAI PATEL V/s. STATE OF GUJARAT*⁵, it had been reiterated that NDPS Act cases should be tried as early as possible because in such cases normally, the accused are not released on bail.

It is no doubt for the prosecution to establish and prove beyond reasonable doubt the commission of offences by the petitioner-A.1 during the course of trial but at this stage, as per Section 37(1)(b) of the NDPS Act and the case law cited *supra*, this Court necessarily has to be satisfied that the material placed before it leads to an inference that reasonable grounds are there to support the plea that the accused is not guilty. However, given the facts and circumstances of the case, there are no

³ (2013) 2 SCC 590

⁴ (1994) SCC 731

⁵ (2002) 10 SCC 529

such reasonable grounds to believe that the petitioner-A.1 is not guilty of the offences alleged against him. Leaving other aspects aside, the alleged seizure of over 9 Kgs of Amphetamine from the rented accommodation of the petitioner-A.1 dispels any such possibility.

As regards the grant of bail to A.3, perusal of the order dated 15.03.2018 passed in CrI.P.No.1828 of 2018 demonstrates that the Court was influenced by the fact that the very presence of A.3 at the place where he was allegedly apprehended was thrown open to doubt owing to the mobile call data which indicated that he was elsewhere. It was only on the strength of this factor that A.3 was granted bail without reference to Section 37 of the NDPS Act. However, no such circumstance arises in the case of the petitioner-A.1.

Significantly, in SATPAL SINGH V/ s. THE STATE OF PUNJAB⁶, the Supreme Court noted that the bail order passed by the High Court did not refer to Section 37 of the NDPS Act though the quantity was reportedly commercial and held that the High Court could not have and should not have passed an order under Sections 438 or 439 CrPC without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail.

Further, the aspect of bail being granted to A.3 was also considered while dismissing the earlier bail petition in CrI.P.No.11213 of 2018 filed by the petitioner-A.1. Perusal of the order dated 19.11.2018 passed therein demonstrates that the Court was not impressed with the contention advanced on his behalf that he should be given relief on the strength of the bail granted to A.3 and it was pointed out that A.1 and A.3 were

⁶ CRL.A.NO.462 OF 2018 DT. 27.03.2018

distinctly and separately placed. The Court also noted that the circumstances established that there was a *prima facie* case against the petitioner-A.1 and that the gravity of the offences alleged was high, entailing stringent punishment.

The normal tenet of criminal jurisprudence is that there is a presumption of innocence until proven guilty and the general rule would be 'bail' while the exception thereto would be 'jail', but this case, being one involving the manufacture and trafficking of a highly addictive and lethal psychotropic substance, *viz.*, Amphetamine, popularly called 'Ecstasy', would have to be considered not as per the usual norms but in terms of the additional limitations prescribed under Section 37(1)(b) of the NDPS Act. Applying the said standard, this Court finds no reasonable grounds to infer or even believe that the petitioner-A.1 is not guilty, as a *prima facie* case has been built up against him. Further, there are no changed circumstances since the dismissal of his earlier bail petition warranting a different opinion being taken at this stage.

The criminal petition is accordingly dismissed.

JUSTICE SANJAY KUMAR

30th APRIL, 2019

PGS