

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Criminal Petition Nos.3532 and 3533 of 2020

COMMON ORDER:

The CrI.P.No.3532 of 2020 is filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short, 'CrPC) by the petitioner/A.1 and the CrI.P.No.3533 of 2020 is filed by the petitioner/A.2 seeking to grant regular bail to them in Cr.No.219 of 2020 pending on the file of the Station House Officer, Khanapuram Haveli Police Station, Khammam district registered for the offence under Section 8© read with Section 20(b) (II) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act').

2. Heard Sri N.Murali Manohar Reddy, learned counsel for the petitioners/A.1 and A.2 and learned Asst. Public Prosecutor for the respondent-State and perused the record.

3. As per the remand report and charge sheet, the allegations against the petitioners herein are as follows:-

A.1 to A.6 are associates with each other and they are doing ganja business. The A.1-Islavath Shankar is resident of Islavath Thanda village, Mahaboobabad Mandal and District and A.2-Badavath Soniya is resident of Dharmaram village, Maripeda mandal of very same district. The A.1 is running JCB vehicle and on his JCB vehicle works, he went to Bhadrachalam, where he got acquaintance with Alok of

Rampur village, who is doing ganja business. On his advice, A.1 has joined with him in ganja business on salary basis.

4. It is further alleged that A.5-Kotesesh is at Chitrakonda of Malkangiri and the A.1 used to collect ganja from A.5 in Chithrakonda and hand over to driver sent by Alok in Chithrakonda. As Alok had not paid money to the A.1, Alok gave his tractor trolley which is not having registration number to A.1. Thereafter, A.1 purchased a tractor engine and started ganja business individually since the said business is very profitable. He has arranged the box underneath the tractor for transporting.

5. It is further alleged that in the month of July, 2020, A.1 went to Chintrakonda along with his tractor and purchased ganja for Rs.3,50,000/- from A.5 and sold away the same to A.3-Guguloth Ravindranaik, who belongs to Dharmaram village, Maripeda mandal and at present residing in Srinagar colony, Khammam. Even then, A.1 continued his ganja business with A.3. A.1 got acquaintance with A.6-Chotu, resident of Nasik, Maharashtra State. A.1 used to take the help of A.3 in transporting and shifting the ganja into vehicles by giving some amounts to A.3. A.1 engaged A.2, as his JCB driver and worker and A.2 has been working with A.1 since four years believably on his JCB as driver.

6. On 30.06.2020, the A.1 instructed A.2 and A.4-Mohan who is also a driver, that ganja has to be taken to Khammam from Bhadrachalam by his tractor, and to hand over the same to A.5, A.5 will hand over the ganja and the tractor to them, and the said tractor to be escorted by his Glamour Motor cycle bearing No.AP 36 R 0609 and offered Rs.20,000/- to A.2 for escorting his ganja tractor. On acceptance of the same by A.2 and A.4, the A.1 informed them that the tractor will be parked in front of vacant house plot situated at residential apartment of A.3 in Srinagar colony, Khammam since he is already having deal with A.3, to take care about the tractor and ganja by offering some amounts to A.3, as well as he had done ganja business with him earlier.

7. It is further alleged that on 30.06.2020, A.2 and A.4 went to Bhadrachalam on motor cycle and on the tractor of the A.1, and on the same day, they have handed over the tractor to A.5 at Bahdrachalam and stayed at Bhadrachalam till return of A.5. On 01.07.2020 at about 11.P.M., A.5 came to Bhadrachalam with ganja tractor and handed over the same to A.4 while the A.1 followed up every movement. After handing over the ganja tractor, A.4 left for Bhadrachalam with the ganja tractor while the A.2 escorted the ganja tractor. On 02.07.2020 at 6 a.m. after parking the ganja tractor in front of the residential apartment of A.3, he has

informed the same to the A.1 through cell phone and A.1 instructed A.3 to take care about the ganja tractor. According to deal of A.1, A.5 has to hand over the ganja to A.6-Chotu of Maharashtra. A.1 came to Khammam by his TATA Indica Car bearing No.AP 24 AY 6698 to shift the ganja into his car from the tractor and while he was discussing with A.2 about transportation of the ganja to A6, his car was broken down. In the meantime police apprehend them and seized 440 kgs., of dry ganja from their possession which is more than the commercial quantity.

8. The above stated facts would reveal that there are specific allegations/overt-acts against both the A.1 and A.2. The *modus operandi* adopted by the A.1 and A.2 in purchase, transport and sale of ganja was specifically mentioned in the remand report as well as in the charge sheet.

9. Learned Public Prosecutor, on instructions, would submit that the Investigating Officer has completed investigation and filed charge sheet on 06.11.2020 itself.

10. Learned counsel for the petitioners has filed a copy of the said charge sheet along with memo dated 04.12.2020.

11. Learned Public Prosecutor, on instructions, would further submit that the Sessions Case number is awaited.

12. The record would reveal that the Investigating officer in Cr.No.219 of 2020, after completion of investigation, filed charge sheet. In the charge sheet also, the manner in which the petitioners herein/A.1 and A.2 have committed the offence and the *modus operandi* adopted by them in commission of offence i.e., purchase, transport and sale of ganja is specifically mentioned. A.1 has purchased the tractor and engaged A.2 as a driver to his tractor for transportation of ganja and the same clearly shows that the A.2 has also actively participated in commission of the offence. As stated above, 440 kgs., of ganja was seized from the possession of the petitioners/A.1 and A.2. The said quantity of ganja is a prohibited item as per the provisions of NDPS Act and the same is more than commercial quantity as per the notification issued by the Union of India, in accordance with Section 2 of the NDPS Act.

13. The hon'ble Apex Court In **Union of India Vs. Ram Samujh**¹ has laid down certain parameters to be followed while considering the bail application filed by the accused involved in any offence under the provisions of the NDPS Act. One of the parameters is to check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act, should not be released on bail during trial unless mandatory conditions provided in Section 37 of the NDPS Act, namely, (i)

¹ 1999 9 SCC 429,

there are reasonable grounds for believing that accused is not guilty of such offence and (ii) that he is not likely to commit while on bail, are satisfied. The High Court has to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs.

14. The Hon'ble Apex Court in **State of Kerala Vs. Rajesh**² and others categorically held that the jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It was further held that the scheme of Section 37 of the NDPS Act, reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 of the NDPS Act, which commences with *non-obstante* clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the 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

² AIR 2020 SC 721

these two conditions is not satisfied, the ban for granting bail operates.

15. It was further held that the expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

16. In view of the above stated law laid down by the Hon’ble Apex Court, as discussed supra, there are specific overt-acts against both the petitioners/A.1 and A.2. The manner in which they have committed the offence and *modus operandi* adopted by them in purchase, transport and sale of ganja is specifically mentioned. The role played by each of the accused is also specifically explained in the charge sheet. 440kgs, of ganja was seized from the possession of A.1 and A.2 and the same is more than commercial quantity. The petitioners herein have failed to establish the twin requirements as laid down by the Hon’ble Apex Court in **Rajesh** supra. There are no reasonable grounds for believing that the petitioners are not guilty of such offence. Therefore, this Court is not inclined to grant regular bail to the petitioners herein.

17. In view of the above discussion, these Criminal Petitions are dismissed.

18. However, perusal of the record would show that the A.1 is an agriculturist and A.2 is a tractor driver. They are in jail from 04.07.2020. Therefore, the designated Court i.e. Special Sessions Judge for trial of Cases under Narcotic Drugs and Psychotropic Substances – cum - I Additional Sessions Judge, Khammam is directed to conduct and conclude the trial in Cr.No.219 of 2020 on the file of the Station House officer, Khanapuram Haveli Police Station, Khammam, as expeditiously as possible by following Standard Operating Procedure (SOP) issued by this Court from time.

Miscellaneous petitions, pending if any, shall stand closed.

Date: 18.12.2020.
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K. LAKSHMAN, J