

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION No.6454 of 2020

ORDER:

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, is filed seeking grant of regular bail to the petitioners herein who are arrayed as accused Nos.5 and 6 (A.5 and A.6) in Crime No.458 of 2020 on the file of Shamshabad police station, Cyberabad. The offences alleged against the petitioners are under Section 20(B) of NDPS Act, 1985.

2. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the respondent No.1 State and perused the record.

3. With the consent of the learned counsel appearing for the parties, the criminal petition is taken up for hearing through Video Conferencing in the virtual Court today, i.e. 31.12.2020.

4. It is the submission of the learned Counsel for the petitioners that there are no overt acts alleged against the petitioners. Leaned Counsel for the petitioners would further submit that, if the entire quantity of Narcotic substance seized by the respondent authority is apportioned proportionately to the number of accused arrayed in the crime, the same would be less than the commercial quantity and, as such, the rigorous provisions of Section 37(1) of NDPS Act cannot be made applicable. Learned Counsel for the petitioners would further submit that the vehicle in which the Narcotic substance was being transported does not belong to the petitioners. Learned Counsel for the petitioners would further submit that the petitioners were falsely

implicated in the above crime merely because the petitioners went near the tollgate when the offending vehicle with this Narcotic substance reached the tollgate. Learned Counsel for the petitioners has also drawn attention of this Court to the order passed by the coordinate bench of this Court in Criminal Petition No.3305 of 2020 and submit that this Court in similar circumstances while taking note of the total quantity of the Narcotic substance seized and the number of accused involved had appropriated the same proportionately to see whether such quantity would be in excess of the commercial quantity prescribed under Schedule I of the NDPS Act. Learned Counsel for the petitioners would further submit that the petitioners are not connected in the commission of the above crime in any manner and would abide by any conditions imposed by this Court if granted bail.

5. On the other hand, learned Additional Public Prosecutor would submit that the petitioners who are arrayed as accused Nos.5 and 6 are peddlers of the narcotic substance and are dealing in the prohibited substance on regular basis by purchasing the same at lower rate from the neighboring State and selling to various other people for higher price. Learned Public Prosecutor would further submit that as directed by this Court on 07.12.2020, to enquire into as to whether the vehicle in which the offending material was being transported belonged to either A-5 or A-6, disclosed that no details were available with the transport department in the State regarding the vehicle, since the same is registered in the State of Maharashtra. Learned Additional Public Prosecutor would thus, submit that the authorities are

corresponding with Maharashtra Transport authorities to ascertain the details. Learned Additional Public Prosecutor would submit that A-1 to A-9 are collectively involved in the commission of the offences and thus the appropriation of the quantity of the prohibited substance proportionately to each of the accused is unknown to law apart from the fact that irrespective of quantity all NDPS offences are Non-bailable regardless of the quantity of the contraband possessed.

7. Having regard to the submissions made as above, and also taking note of the law laid down by the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Kajad***¹, reiterated in ***Samiullah v. Superintendent, Narcotic Central Bureau***² and further reaffirmed in ***Union of India v. Rattan Mallik @ Habul***³, dealing with the grant of bail in offences arising under special Act, like NDPS Act, wherein deviating from the legal doctrine laid down by the Supreme Court that – “*Bail is Rule, Jail is exception*”, it has been held that “*Negation of bail is the rule and its grant an exception*”, the petitioner is required to satisfy the twin condition as laid down in ***Union of India v. Sanjeev V. Deshpande***⁴, before being enlarged on bail. Further, as observed by the Hon'ble Supreme Court in ***State of Kerala v. Rajesh***⁵, whereby this Court is required to record reasonable satisfaction for considering the application for grant of bail and also to satisfy itself of the twin condition. In view of the principles as enunciated in the above decisions, the claim of the petitioners that there being no

¹ (2001) 7 SCC 673

² (2008) 16 SCC 471

³ (2009) 2 SCC 624

⁴ (2014) 13 SCC 1

⁵ 2020 SCC online SC 81

antecedents or if granted bail, the petitioners not involving themselves in the commission of any offences including the offences under the NDPS Act, does not appeal to this court for being accepted. Further, the claim of the petitioners that if the quantity of contraband seized is apportioned among the accused arrayed in the crime, the same would be less than the commercial quantity and thus this court can consider granting bail to the petitioner is also without basis and contrary to law laid down by the Hon'ble Supreme Court in ***State of Punjab v. Baldev Singh***⁶. In view of the above, the present criminal petition is devoid of merit and the petitioners cannot be enlarged by this court by granting regular bail.

8. Accordingly, the Criminal Petition is dismissed.

9. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

JUSTICE T.VINOD KUMAR

Date: 31.12.2020

MRKR

⁶ (1999) 6 SCC 172