

Telangana High Court

Dharavath Aravind vs The State Of Telangana on 4 January, 2021

Bench: T.Vinod Kumar

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION No.6468 of 2020

ORDER:

This criminal petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, is filed seeking regular bail. The petitioners herein are arrayed as accused No.1 and 2 (A-1 and A-2) in Crime No.374 of 2020 on the file of P.S. Bhadrachalam Town, Kothagudem District. The offences alleged against the petitioners are under Sections 8(c) read with Section 20(b) of NDPS Act, 1985.

2. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the respondent - 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. 22.12.2020.

4. Learned Counsel for the petitioners would submit that the petitioners in particular the petitioner No.1 is the owner and driver of the vehicle in which contraband substance (ganja) was being transported after the said vehicle hired by accused No.4, while the petitioner No.2 got into the car only to give company to the petitioner/A-1 during their travel from East Godavari to Hyderabad. Learned Counsel for the petitioner though sought to urge for grant of regular bail to the petitioners on humanitarian grounds by stating that petitioner No.1 is the sole bread winner for his family and is eking out his livelihood by running the car on hire, had agreed to carry the parcel weighing about 43 kgs., at the behest of accused no.4 for being delivered at its destination. It is submitted by the learned counsel that as the petitioners are in judicial custody since, 22.10.2020, the family of the petitioner no.1 is placed in a pathetic situation, without any means for their survival. Learned counsel would submit as a cab driver, the petitioners are not required to know as to the contents of the parcel, which they were required to deliver at its destination. Learned Counsel for the petitioner would also submit that the offending material was only about 43 kgs and if apportioned between the petitioners, the quantity found and seized is in excess of permitted commercial quantity only marginally. Learned Counsel for the petitioner would further submit that the respondent authority while seizing the narcotic substance and apprehending the petitioners did not comply with the mandatory requirement of Section 42 and 50 of NDPS Act and as such the entire process stands vitiated. Learned counsel would further submit that there are no antecedents of petitioners involvement in similar offences earlier. It is also submitted that there is no material to connect the petitioners with the offence except the confessional statement said to have been given to the investigating agency. Learned counsel would submit that since, all the witnesses were examined and their statements recorded by the investigating authority, the petitioners may be granted bail. In support of his submissions learned counsel has placed reliance on the order of a coordinate bench of this court in CrI.P. No. 6634 of 2020.

5. Per contra, the learned Public Prosecutor by drawing attention of this Court to the judgment of the Hon'ble Apex Court in State of Kerala v. Rajesh¹, would submit that NDPS Act being a special enactment, granting of bail for contravention of 1 2020 SCC Online SC 81.

provisions of the Act, is circumscribed by the provisions of Section 37 of NDPS Act.

6. Learned Additional Public Prosecutor would submit that before this Court before granting bail to the accused involved in the offences under NDPS Act, is required to record its satisfaction of existence of reasonable grounds namely i) Court should be satisfied that there are reasonable grounds for believing that the petitioners are not guilty of such offence ; and ii) petitioners are not likely to commit any offence while on bail. Learned Additional Public Prosecutor would submit that there is no plausible explanation forthcoming from the petitioner for traveling all the way from the native place in Nalgonda District to East Godavari District and carrying the offending material from East Godavari to Hyderabad at the behest of A-4 unless and until they are involved in the above offence. But for the interception and search of the vehicle by the respondent authority, whereat the contraband material was found and seized, the petitioner would have continued with same activity.

7. Learned Additional Public prosecutor would further submit that investigation into the crime registered is in progress and as of today six witnesses are examined. It is further submitted by the learned Additional public prosecutor that the co-accused no. A.3 and A.4 in the above crime are still absconding and FSL report is also awaited. Further, the learned Additional Public prosecutor would submit that as per the confessional statement given by the petitioners to the respondent investigating authority as recorded in remand report, it would be clear that the petitioners were involving themselves in commission of the offence under NDPS Act, to earn more money in easy way, by undertaking transport of ganja secretly, thus, the claim of innocence being pleaded now cannot be accepted. In so far as the other submission of the learned counsel for the petitioners about non compliance mandatory requirement of Section 42 and 50 of NDPS Act, is concerned, learned Additional Public prosecutor would submit that the said provisions do not stand attracted since, no personal search of the petitioners was taken and the offending substance was found in the vehicle during search. In support of the above submission, learned Additional Public Prosecutor placed reliance on the Apex court judgement in Union of India v. Ram Samujh and Ors 2.

8. Having given due consideration to the submissions made as above, and in view of the law laid down by the Apex Court, this Court is firstly required to satisfy itself as to whether reasonable grounds exists for grant of bail or not. The usage of term 'reasonable grounds' in the context of non-obstante clause with which Section 37 of NDPS Act, signifies that it is not merely prima facie case but something more, i.e., substantial probable causes for believing that the accused is not guilty of the alleged offence. In the facts of the present case, the petitioners were found possessing the prohibited (narcotic) substance while transporting the same. Further, the confessional statement given by the petitioners to the investigating authority upon seizure would clearly go to show that the petitioners were involved in dealing with the narcotic substance to earn money in easy way, though not being involved / caught by the law enforcing authority any time earlier. Though, it is submitted that the family of the petitioner no.1 is suffering severely, it is only the petitioner who is to be blamed for such 2 (1999) 9 SCC 429.

suffering. The petitioners without realizing that as a result of their acts in dealing with narcotic substance, many families are suffering due to the ill effects of the narcotic substance, having a lasting effect on the health, which is more harsh to bear than loss of a member of the family upon being murdered. At this point, it is apposite to refer to the observations of the Hon'ble Supreme Court in Ram Samujh case (supra), wherein it is observed that -

"It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved."

9. In the light of the above, and considering the facts of the case, this court does not find that the petitioners have made out reasonable grounds to the satisfaction of this court for grant of bail, as grant of bail under special Acts like NDPS Act, is an exception, while negation of bail is the rule, as held in State of Madhya Pradesh v. Kajad³.

10. Further, even the other submission of the learned counsel for the petitioner with regard to non-compliance mandatory requirement of Section 42 and 50 of the NDPS Act, is concerned, ³ (2001) 7 SCC 673 the same is also without any substance in view of the authoritative pronouncement of the Hon'ble Supreme Court in State of Himachal Pradesh v. Pawan Kumar⁴, reiterated in Jeet Ram v. Narcotic Central Bureau⁵, wherein it was held that provisions of Section 50 of NDPS Act, are applicable only in case of personal search. As in the facts of the present case, the narcotic substance was found in the vehicle during search of the vehicle, the claim of the petitioner that the mandate of provisions of Section 50 of the NDPS Act, not being complied is without basis and the submission in this regard is liable to be rejected.

11. Therefore, there is no merit in the bail petition and is accordingly dismissed, reserving liberty to the petitioners to file fresh petition(s) at an appropriate stage in accordance with law, if so advised. It is clarified that the observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter.

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

JUSTICE T.VINOD KUMAR Date: 04.01.2021 MRKR 4
(2005) 4 SCC 350 5 2020 SCC Online SC 735.