

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3860 OF 2020

ORDER:

This petition is filed under Section 439 Cr.P.C to enlarge the petitioner/A.4 on bail in connection with Cr.No.228/2020 of Chilakaluripet Urban Police Station, Guntur District, registered for the offence punishable under Section 20(b)(c) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act, 1985").

2. The case of prosecution in nut-shell is that, A.1 and A.2 are the driver and cleaner of the lorry bearing registration No.TN 70 J 4491 which belongs to A.3. On 31.07.2020, on receipt of credible information, Shaik Mohammad Safee, Sub-Inspector of Police, Chilakaluripet Urban Police Station arrested A.4 and A.5 at Jaitavaram Centre (turning point), near Bylapudi village, between Bylapudi village and Jaitavaram villages and recorded their detailed confessional statements in the presence of mediators. Both the accused have confessed their involvement in the commission of offence. A.4 and A.5 have confessed that on instructions of A.6 i.e., Pandyan they committed these offences for their monetary benefit to a tune of Rs.30,000/-. Sub-Inspector of Police, Chilakaluripet Urban Police Station seized VIVO smart phone (gold colour) with IMEI Nos.869338037068032, 869338037068024 having SIM Card No.35257610643097101, 35257710640391901 and having SIM No.9849697929 from A.5 for the purpose of investigation in the presence of mediators.

3. Basing on the confessional statements of A.4 and A.5, A.6 Pandyan was added as an additional accused. Thereafter, the petitioner/A.4 was remanded to judicial custody in connection with Cr.No.228/2020 of Chilakaluripet Urban Police Station, registered for the offence punishable under Section 20(b)(c) read with 8(c) of the NDPS Act, 1985.

4. The main contention of petitioner/A.4 is that nothing was recovered from him and he is a native of Visakhapatnam. Whereas A.1 and A.2 were found transporting Ganja in the said lorry in contravention of NDPS Act, 1985 which constitute an offence punishable under Section 20(b)(c) read with 8(c) of the NDPS Act, 1985. The petitioner/A.4 contended that the petitioner was implicated in the commission of offence only for monetary benefit.

5. No doubt, no contraband was recovered from the possession of petitioner/A.4. But, as per the contention of learned Assistant Public Prosecutor for the State, the petitioner/A.4 is the prime accused, who was transporting Ganja in the lorry registration No.TN 70 J 4491 driven by A.1 and A.2. But, as per the material available on record, investigation in this case is not yet completed and A.6 Pandyan is also not yet apprehended. However, based on the call data the police have to trace him. Still the investigating agency has to collect the evidence relating to the involvement of the petitioner/A.4 in the alleged offence. In case, the petitioner/A.4 is released on bail there is every possibility of interfering with the further investigation.

6. Unless satisfied by the requirement under Section 37 of NDPC Act, 1985, this Court cannot enlarge the petitioner/A.4 on bail as a matter of course, in view of the law declared by the Apex Court in

Criminal Appeal Nos.154-157 of 2020 (Arising out of SLP (Crl.) Nos.7309-7312 of 2019) which relied upon the decisions reported in **Satpal Singh vs. State of Punjab**¹ and **Union of India vs. Ram Samujh and Ors**² wherein it is held as follows:-

“The scheme of Section 37 reveals that the exercise of power to grant bail 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-obstinate 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 these two conditions is not satisfied, the ban for granting bail operates.”

“The expression “reasonable ground” 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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the Cr.P.C, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

¹ 2018 (13) SCC 813

² 1999(9) SCC 429

7. Hence, in view of foregoing reasons and the principle laid down in judgments of Apex Court referred supra, I find no ground to enlarge the petitioner/A.4 on bail, at this stage. Consequently, the petition is liable to be dismissed.

8. Accordingly, Criminal Petition is ***dismissed***.

Consequently, miscellaneous applications pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 21.09.2020

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