

HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CRIMINAL PETITION NO: 2988 OF 2019

Between:

1. K.SRINIVASA RAO Padmasali, Near Kumari Cinema Theater, Ullithota Street, Rajamahendravaram

...PETITIONER(S)

AND:

1. STATE OF AP rep by Public Prosecutor, High Court of Andhra Pradesh at Amaravati

...RESPONDENTS

Counsel for the Petitioner(s): K PRIDHVI RAJU

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

THURSDAY, THE THIRTEENTH DAY OF JUNE TWO THOUSAND AND NINETEEN

:PRESENT:

THE HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRIMINAL PETITION No. 2988 OF 2019

Between:

Katta Srinivasa Rao @ Srinivas S/o. Venkanna

.. Petitioner/Accused No.1

A N D

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court Buildings, Velagapudi,
Amaravati, Guntur District

..Respondent/Complainant

Petition Under Section 437 & 439 of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the Criminal Petition, the High Court may be pleased to release the petitioner on bail in Crime No. 18 of 2019 on the file of the Ramachandrapuram Police Station, Ramachandrapuram, East Godavari District.

The Petition coming on for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Sri K. Pridhvi Raju, Advocate for the Petitioner and of the Public Prosecutor for Sole Respondent.

The Court made the following: ORDER

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**CrI.P.No.2988 of 2019****ORDER :**

This criminal petition is filed under Sections 437 and 439 of the Criminal Procedure Code seeking the release of the petitioner/Accused No.1 on bail in Crime No.18 of 2019 on the file of Ramachandrapuram Police Station. In this case, the Accused No.1 was charge sheeted under Section 8 (c) r/w Section 20 (b)(ii)(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'). The petitioner/Accused No.1 was arrested on 21.01.2019 and was remanded to judicial custody.

This Court has heard the learned counsel for the petitioner and learned Public Prosecutor for the respondent-State.

Learned counsel for the petitioner states that the petitioner/Accused No.1 did not commit any offence whatsoever and that he has nothing to do with the alleged seizure of the ganja. Apart from stating that the investigation is also completed and that the petitioner has no criminal antecedents etc., the learned counsel also raised an issue that apart from this petitioner/Accused No.1, there are four (4) other accused in this case. According to him, the total quantity of Ganja being transported was 48kgs. Therefore, relying upon a judgment of a learned single Judge of this

Court in CrI.P.No.2433 of 2018, learned counsel argues that as there are five accused, if the seized ganja is apportioned, the quantity that is alleged to be transported by one of the accused is not above the commercial quantity. According to him, by virtue of this theory of apportionment, each of the accused was carrying about 9.6 kgs of ganja only. Alternatively he submits that A.2 was caught with 2 kgs only. Therefore, the counsel prays for a bail, as the quantity is not above the commercial quantity. He states that the bar under Section 37 of the Act does not apply.

In reply to this, learned Public Prosecutor very strongly opposes grant of bail. He submits that the petitioner is fully involved in the case. He argues that the theory of apportionment is not as per the statute and that the bail provisions in the Act must be given their correct and strict interpretation. He also relies upon a judgment of learned single Judge of this Court in CrI.P.No.3744 of 2017, wherein, a similar argument on the basis of apportionment was advanced. The learned Single Judge held as follows:

“The argument is though mathematically correct, logically and legally not. When an offence of this nature is collectively committed by a number of accused and they were intercepted and caught at a time and at one place by the police, the apportionment of the contraband seized among accused is impermissible. It should be noted that NDPS Act does not contain any express provision permitting such

apportionment. Therefore, there is no legal sanction behind it. While committing the offence collectively, the accused may, for convenience sake, carry the contraband individually. In such circumstances, the offence has to be viewed as a single offence but not as different offences. In CrI.M.P.No.12358 of 2016 a learned single Judge of this Court, no doubt, applied the concept of apportionment. However, in another case, in common order in CrI.M.P.No.2052 and 2056 of 2017 dated 15.03.2017 the said concept was not followed by another learned single Judge. As stated, since there is no statute sanction, such an apportionment is impermissible, in my considered view.

In the instant case, as already stated, 50 kgs. of contraband Ganja was found in the collective possession of the petitioners and since the contraband is of commercial quantity and the investigation is still pending and in view of a strong prima facie material against the accused, it is not a fit case to grant bail to them.”

Therefore, learned Public Prosecutor opposes grant of bail. He submits that A.1 is the kingpin in this case and the entire offence is one offence only.

This Court after hearing both the learned counsels notices that the Act is a special enactment which is governing the offences. Section 37 of the Act is a special provision which makes every offence under the Act to cognizable and non-bailable. Section 37(b) of the Act says that no person accused of an offence (except offences under Sections 19, 24 and 27

and offences involving a commercial quantity), shall be released on bail or on his bond until the Public Prosecutor has been given an opportunity to oppose the application and only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is not likely to commit any offence while on bail. A cumulative satisfaction of all these ingredients is necessary before the bail is granted. A specific table is given, wherein the commercial quantities of each narcotic substances are defined.

The reason and the rationale behind the stringent and mandatory requirements under Section 37 of the Act has been spelt out clearly by the Apex Court in ***Union of India v. Ram Samujh and another***¹. The very purpose of imposing restrictions for grant of bail is to ensure that the offenders under this law are treated differently because in the words of the Apex Court the purpose is to check the menace of dangerous drugs flooding the market and the activities of the drug dealers which have a deadly impact on society itself. It is also an enactment, where commercial quantity is specifically defined under the Act itself. Section 2(7)(a) of the Act defines a commercial quantity. A small quantity and commercial quantity of various narcotic substances drugs are

¹ 1999(9) SCC 429

described in the table and clear distinction is kept between them.

Therefore, if the intention of the statute makers was to ensure that a bail is not routinely granted and that certain conditions must be satisfied before a bail is granted, this Court is of the opinion that the Court cannot deviate from the purpose of the statute and water down its provisions by a process of interpretation. Very specifically it is mentioned in the Act that a person accused of an offence involving commercial quantity shall be released on bail only if the Public Prosecutor has been given an opportunity to oppose the bail and thereafter, the Court is satisfied that there are reasonable grounds believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

As per the settled law, unless and until all these three conditions are cumulatively satisfied, a bail cannot be granted. The judgment of the Apex Court reported in ***Union of India v. Rattan Malik***² is very clear by adopting the mathematical method of dividing the quantity of the substance by the number of the accused, the provisions of this Act will be watered down. If a bail is granted, it will be contrary to the specific words of the statute and the decisions of the Apex Court on the subject. As was held by the single

² 2009(2) SCC 624

judge of this Court, in Crl.P.No.3744 of 2017, it is a single offence that is committed by all the accused in this case. Therefore, they cannot say that there should be apportionment. Apart from that, the Act itself does not contain any express or indirect provision permitting such apportionment. When the statute provides that an act should be done in a particular manner it should be done in that manner or not at all. This is the well settled rule of statutory interpretation. The purpose for which the statute was enacted must kept in mind and an interpretation that would reduce the legislation to a futility. **Badshah v. Urmila Badshah**³ is the relevant case for this proposition.

This Court, therefore, of the view that the sections of the Act cannot be watered down by virtue of an interpretation or by a mathematical calculation which in the opinion of this Court is not as per the Act.

Therefore, this Court holds that the question of apportionment should not and cannot arise in a case like this. This Court agrees with the decision of the learned single Judge in Crl.P.No.3744 of 2017 and holds that the concept of apportionment is alien to the Act.

In these circumstances, this Court is of the opinion that as the petitioners in this case are accused of transporting 48

³ (2014) 1 SCC 188

kgs of Ganja, they are not entitled to bail as a prayed for. None of the conditions under Section 37 of the Act are fulfilled.

In the result, the Criminal Petition is dismissed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

**SD/- K. TATA RAO
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

**[One Fair Copy to the Hon'ble Sri Justice D.V.S.S. Somayajulu,
For his Lordships Kind Perusal]**

To,

1. The I Additional District and Sessions Judge, Rajahmundry, East Godavari District.
2. The Superintendent, Central Prison, Rajahmundry, East Godavari District.
3. The Secretary, Law Ministry, New Delhi.
4. The Secretary, Advocates Library, A.P.High Court, Amaravati.
5. 9 L.R. Copies.
6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
7. The Secretary, A.P. Advocates Association Library, High Court Buildings, A.P.
8. The Ramachandrapuram Police Station, Ramachandrapuram, East Godavari District.
9. One CC to SRI. K. PRIDHVI RAJU, Advocate [OPUC]
10. Two CCs to the PUBLIC PROSECUTOR, High Court of A.P. [OUT]
11. Two CD Copies

Chp

✓

HIGH COURT

DATED:13/06/2019

18/7/2019
2019:APHC:15821
OC
Rs. 12000

ORDER

CRLP.No.2988 of 2019

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CRIMINAL PETITION IS DISMISSED

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PM

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