

SUPREME COURT OF INDIA **REPORTABLE**
Bench: Justices B.R. Gavai and Sandeep Mehta
Date of Decision: 12th February 2024

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. OF 2024
(Arising out of SLP(Crl.) No(s). 8137 of 2022)

STATE BY THE INSPECTOR OF POLICE ...APPELLANT(S)

VERSUS

B. RAMU ...RESPONDENT(S)

Legislation:

Sections 8(c), 20(b)(ii)(c), and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)
Section 438 of the Code of Criminal Procedure, 1973
Section 37 of the NDPS Act

Subject: Appeal against the grant of anticipatory bail to the respondent-accused in a case involving the seizure of a commercial quantity of ganja.

Headnotes:

Grant of Anticipatory Bail Challenged – State's appeal against the High Court's decision granting anticipatory bail to the respondent-accused in connection with the seizure of 232.5 kg of ganja, exceeding the commercial quantity as defined in the NDPS Act. [Para 2]

Involvement in Drug Offences – Respondent-accused indicted as a conspirator for procurement/supply of ganja. High Court ignored respondent's previous involvement in similar NDPS Act cases. [Paras 3, 6]

High Court's Approach Criticized – Supreme Court noted the High Court's failure to consider the commercial quantity of the drugs and the respondent's criminal history. Also, the peculiar conditions imposed by the High Court for anticipatory bail, including a financial deposit to an advocate's association, criticized as unrelated to bail jurisprudence. [Paras 5, 6, 13]

Requirements for Bail Under NDPS Act – Section 37 of the NDPS Act requires courts to be satisfied with the accused's non-guilt and non-commitment of any offence while on bail, especially in cases involving commercial quantities of drugs. [Para 9]

Quashing of Anticipatory Bail – Supreme Court found the High Court's order cryptic and perverse, quashing the anticipatory bail and setting aside the order. Respondent-accused directed to surrender within 10 days. [Paras 14, 15, 17]

Referred Cases: None.

O R D E R

Mehta, J.

1. Heard.
2. This appeal is directed against the order dated 25.01.2022 passed by the learned Single Judge of the Madras High Court whereby, the application under Section 438 of Code of Criminal Procedure, 1973 preferred by the respondent-accused in connection with Crime No. 235 of 2021 registered at P.S. Erode Taluk, District Erode was allowed and the respondent-accused was granted anticipatory bail in connection with the aforesaid FIR registered for the offences punishable under Sections 8(c), 20(b)(ii)(c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter being referred to as 'NDPS Act').
3. On perusal of the case records, it becomes apparent that on search of the house of Brinda/A1 and Kesavan/A2, both were found to be in possession of 232.5 kg of *ganja*. The respondent-accused herein was indicted as being the conspirator for procurement/supply of the *ganja* so recovered.
4. As per the schedule to the NDPS Act, the commercial quantity of *ganja* is 20kg. It is thus not in dispute that the quantity of the narcotic substance seized in this case is well above commercial quantity.
5. The learned Public Prosecutor appearing for the State in the High Court opposed the prayer for grant of anticipatory bail to the respondent-accused herein. The High Court considered the application for grant of anticipatory bail and allowed the same in the following manner:-

"3. The learned counsel appearing for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case. He further submitted

that all the cases were put up cases by the police in order to implicated him. Further he also submits that all the accused were arrested and all were released in the Trial Court in statutory bail. Hence, he prays for grant of anticipatory bail.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that 3 previous cases pending against the petitioner, investigation almost completed. However, he vehemently opposed to grant anticipatory bail to the petitioner.
5. Considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.
6. Accordingly, the petitioner is directed to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, before the learned Judicial Magistrate - I, Erode, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, 3/6 https://www.mhc.tn.gov.in/judis_Crl.O.P.No.1067 of 2022 failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner is directed to deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) to the credit of the Registered Tamil Nadu Advocate Clerk Association, Chennai within a period of two weeks from the date of receipt of a copy of this order and shall produce the said receipt before the Court below.

[b] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioner is directed to report before the respondent police on every Tuesday and Saturday at 10.30 a.m., until further orders;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioner shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on anticipatory bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC."

6. From the order reproduced supra, it is apparent that the learned Single Judge totally ignored the submission of the Public Prosecutor that the respondent-accused was arraigned in three more previous cases (two of which involve offence under the NDPS Act). Furthermore, the learned Single Judge also totally ignored the fact that the recovered *ganja* was well in excess of the commercial quantity as provided in the schedule to the NDPS Act.
7. During the course of submissions, learned counsel for the respondent vehemently and fervently contended that during the intervening period, the matter has progressed much ahead inasmuch as the investigation has been concluded and charge-sheet has been filed. Now the matter is posted for framing of charges against the accused.
8. Section 37 of the NDPS Act deals with bail to the accused charged in connection with offence involving commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready reference:-

“[37. Offences to be cognizable and non-bailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]”

9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or

anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (*ganja*), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.
11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.
12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.
13. Manifestly, a very strange approach has been adopted by the learned Single Judge in the impugned order whereby the anticipatory bail was granted to the respondent on the condition that the appellant would deposit a sum of Rs. 30,000/- to the credit of the registered Tamil Nadu Advocate Clerk Association, Chennai along with various other conditions. The condition no. [a] (*supra*) so imposed by the High Court is totally alien to the principles governing bail jurisprudence and is nothing short of perversity.
14. The fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was *prima facie* not guilty of the offences alleged.

15. As a consequence, the impugned order is cryptic and perverse on the face of the record and cannot be sustained. Thus, the same is quashed and set aside.
16. The appeal is allowed in these terms.
17. The respondent-accused shall surrender before the learned trial court within a period of 10 days from today.
18. Pending application(s), if any, shall stand disposed of.

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