

(2015) 04 KAR CK 0142

In the Karnataka High Court

Case No : Criminal Petition No. 100492 of 2015

Chiranjeevi and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(n)(c),
42, 50

Citation : (2016) 1 AKR 41 : (2015) 4 Crimes 168 : (2015) 4 KarLJ 504

Hon'ble Judges : G. Narendra, J

Bench : Single Bench

Advocate : Srinand A. Pachhapure, for the Appellant; K.S. Patil, HCGP,
Advocates for the Respondent

Judgement

G. Narendra, J.

1. This is a petition filed under Section 439 of the Criminal Procedure Code, 1860, (hereinafter referred to as the Code for the sake of brevity) r/w 37 of the Narcotics, Drugs and Psychotropic Substances Act 1985 (hereinafter referred to as the Act for the sake of brevity) filed by the Accused No. 1 and 2 in Crime No. 154/2014 registered by the respondent police praying that they be enlarged on bail pending trial and judgment in the above case.

2. The facts in brief are as follows:--

"The case of the complainant is that the Police Inspector, Old Hubli Police station while in office received reliable information at about 06.30 am on 26/06/2014 informing that two persons from Andhra Pradesh were illegally transporting contraband drugs, that is, ganja, in a purple colour Tata Indigo Manza motor vehicle bearing registration No. AP-23/GY-3115. That the contraband was being transported via Hubli and the destination was Gokarna and Goa where it was intended to be sold. Immediately, the complainant entered the information in the station house diary and also proceeded to inform his superior and obtained

sanction and in accordance with their directions proceeded with the investigation by assembling two panch witnesses Mohammed Iqbal and Saleem. The two witnesses were briefed about the information received and were requested to act as panchas. Along with the panchas he also assembled a team consisting of one PSI, one ASI, one HC and five other PC"s and proceeded to the spot in the office jeep at about 7.00 AM."

3. On receipt of information, the complainant formed a team and proceeded towards the Hubli - Karwar road and waited near the M.T. Mill, where he intercepted the vehicle AP-23/GY - 3115 at about 7.30 AM with its two occupants. On enquiry, the driver revealed his name to be Chiranjeevi s/o Swami Naidu Adappareddy and the other occupant identified himself as Chandrashekar s/o Panda Uman. Thereafter, the occupants were informed about the information received and the purpose of stopping the car. The occupants were asked in writing as to whether they would like the complainant to search the vehicle or would they want the search in the presence of Gazetted Officer and the occupants informed in writing that they preferred the search to be conducted in the presence of a Gazetted Officer and accordingly the Medical Officer, E.S.I. Hospital was requested to be present and the search was conducted. A search of the vehicle resulted in the recovery of 130 kilograms of ganja, a prohibited substance under the Act. The said contraband was found packed in a plastic carry bags in the boot space of the car and when enquired, the accused informed that they contained ganja. When the packets were opened they smelt like ganja and after prima facie confirming that it was ganja, they enquired with the accused as to who supplied it to them and to whom they were transporting the same. To which the accused replied that they had collected the same in Hyderabad and further that they had no pass or permit to possess or transport the same and that they had intended to sell the same for profit. Thereafter the contraband was weighed and found to weigh about 130 kilograms and packed in 60 bundles with a market value of Rs. 13,00,000/-.

4. Thereafter, the complainant removed about 2 samples of 50 grams from each ganja packet and proceeded to seal them with the seal T.S.I. OF OLD HUBLI PS" and affixed a label consisting of the signatures of the complainant and the panchas. The accused were arrested on the spot and returned to the police station and registered a case punishable u/s. 20(B), (ii)(C) of NDPS Act 1985.

5. Heard the learned counsel for petitioners and the learned HC GP. The counsel for the petitioners file a memo and along with the said memo, he has produced the copies of two orders of this Court rendered in CrI.P.2804/2014 and Cd.P.100051/2015, where this court has been pleased to enlarge the accused on bail involved in similar offence and that the quantum of contraband seized in one case is 235 kgs. and in the other case is 95 kgs. The learned counsel submits that in the present case, the quantum of contraband seized is 130 kgs and in this regard, he submits that in the case on hand, there is no clarity regarding the quantities seized. He would draw the Court's attention firstly to the complaint,

wherein in the column 4 quantity seized is shown as 130 kgs valued at about Rs. 13 lakhs. Then he would draw the attention of this Court to the charge sheet, where the weight is mentioned as 141.65 kgs. He further would draw the attention of this Court to the report submitted by the State Forensic Science Laboratory, Madiwala, Bangalore, wherein he would point out the weight of the sample packets, which varies from 50gms. up to 62 gms. He would contend that this is contrary to the assertion of the complainant who has stated that he has drawn samples of 50gms. each only. He would further submit that the FSL report also describes the contents of each packet, wherein it is described the packets each contain dried, green colour small leaves with fruiting and flowering tops, seeds and stalks. He would submit that it is contrary to the complaint wherein there is no mention of any fruiting and flowering tops, seeds and stalks. The complainant has only stated that the packets seized in the vehicle contain Ganja. In the light of these inconsistencies, with regard to the weight, the counsel would argue that the inconsistencies must enure to the benefit of the accused as there is no identity of the property seized from the accused.

6. The counsel would again draw the attention of this Court to the complaint, wherein it has been asserted by the complainant that the sample packets which were said to have been seized with the seal "P.S. of old Hubli P.S." But, whereas in the FSL report, it is stated that each sample packet was sealed with the seal "P.S. Old Hubli" and he would contend that this is one more lacuna which would further advance the case of the petitioners that the very identity of the material seized is in doubt. He would further contend that the evidence in such cases should be strictly viewed as a conviction entails a harsh punishment of minimum 10 years and up to Rs. 2 lakhs fine. He would also contend that in the light of the differences in the seal impressions, the report of the State FSL ought to eschewed from consideration and if that is so, then the entire prosecution must fail and accordingly, the accused in such circumstances are entitled to be released on bail.

7. The petitioner's counsel further draw the attention of this Court to the letter addressed to the Regional Transport Officer, of Sangareddy, Medak District, Andhra Pradesh State, wherein the complainant has sought information regarding the seized vehicle from the jurisdictional transport authority and while so addressing the letter, the complainant has mentioned the quantities seized in various cases. He would submit that the conjoint reading of the complaint, charge sheet and this letter dated 16/9/2014 conclusively demonstrate that there is no unanimity regarding the quantum seized and in the absence of the identity of the goods seized the very basis for conviction is lost and the petitioners are liable to be acquitted.

8. He would further argue that the seizure is not in turn of Section 50 as no Gazetted Officer was present at the time when the contraband was seized. He also tried to make out a case of delay in production of the contraband before the jurisdictional magistrate. He would submit that the said contraband was

forwarded to the FSL only on 15/7/2014 whereas the same is alleged to have been seized on 26/6/2014. He would also submit that the seized materials were produced before the Magistrate only on 7/8/2014 wherein it is shown as weighing 141 kgs. He would further argue that the seizure and Panchnama are violation of Section 42 of NDPS Act.

9. He would submit that the complaint described the contents of the seized packet as powder, whereas in the report they are described as samples with leaves, with fruiting and flowering tops, seeds and stalks. This also creates a doubts with regard to the actual commodities seized from the accused and such doubt must enure to the benefit of the accused. Hence, the accused are entitled to be released on bail.

10. Per contra, the learned HCGP would vehemently deny the allegation that the petitioners have been falsely implicated and he would take this Court through the statement of objection filed on behalf of the respondent police. The learned HCGP would submit that the petitioners were intercepted in morning of 26/6/2014 pursuant to credible information received from reliable sources and he would also draw the attention of this Court to the photographs produced along with the petition, which forms part of the charge sheet. He would also draw the attention of the Court to the photographs placed before the jurisdictional Court, wherein the contraband which was in bundles have been packed in cartoon boxes, sealed and forwarded to the Court.

11. The learned HCGP would submit that the differences in weight could be due to typographical error or it could have been due to additional weight of the packing material. He would contend that these are factual issues which cannot be addressed by this Court and ought to be determined only by trial. He would reiterate that the omission to mention the FIR number in FSL report again could be as a result of typographical error and yet again the fact which has to be proved or disproved in a proper trial and this Court ought not to risk a finding at this stage as the petitioners are accused of heinous crime which is a crime against mankind and he would also point out that the petitioners demanded to be searched in the presence of a Gazetted Officer and accordingly, the Medical Officer of ESI Hospital was requested and in his presence, the search was conducted and contrabands were seized. He would further submit that the erroneous discussion of the quantum of the contraband in the letter addressed to the RTO is not much of consequence as the same be a result of oversight as the respondent were also communicating in respect of other seizures where the quantum seized was 90 kgs. He would point out that the vehicle seized has been correctly identified and the respondents have endeavoured to obtain information to investigate as to whether a third party is involved. He would also submit that the accused do not deserve any sympathy as the petitioners are master minds. The respondents' counsel would also point out where the petitioners have been charged for the offences punishable under Sections 20(b)(n)(c) of the Act, which in the event of conviction entails maximum of 20 years R.I. and maximum of Rs.

2 lakhs fine. He would submit that the very harshness of the penalty is demonstrative of the severity of the crime.

12. In view of the foregoing submissions, the question that falls for consideration of this Court is -

"Whether the petitioners are entitled for grant of bail"?

13. A summation of the arguments of petitioners counsel is that the variation in description of the quantity of the contraband would go to the root of the matter and has vitiated the very identity of the contraband seized. In his endeavour to demonstrate this he has taken the court through the complaint, the application before the learned Magistrate while producing the material and the FSL report and the letter addressed to the Regional Authority, Medak, Andhra Pradesh, wherein the quantities are differently described. Though in the consideration of this Court, the said submission has some significance, but, as rightly pointed out by the respondent, the same has to be demonstrated in a proper trial and the plausible explanation given by the respondent, is that it could be the result of a typographical error and or on account of the weight of the packing materials.

14. The other limb of arguments that the quantification with regard to the samples mentioned in the complaint and the FSL report not tallying is also matter of evidence and as rightly pointed out by the learned HCGP the weighing scale initially used at the time of seizure and the weighing scale used by the FSL are not one and the same. And that apart, it is a fact, which needs to be demonstrated before being accepted as correct. The endeavour of the petitioners' counsel to make much out of the difference in the seizure cannot be looked into at this stage, as it would mount to prejudging issues which are before the trial Court.

15. As rightly, pointed out by the learned HCGP, this is a matter of fact and evidence has to be considered by the court and this Court should not make any observation which may prejudice the case of the prosecution.

16. It is seen that the accused have been intercepted on receipt of credible information, they were attempting to transport on Karwar road and they have admitted that their intention was to sell the same in Gokarna and Goa and they may make huge profits. The quantities seized are commercial quantities.

17. The accused have admitted their possession of the contraband also photographs and search has been conducted in the presence of Gazetted Officer. Thus, there is no infirmity in procedure of seizure and the submission of the learned counsel to the contrary is rejected.

18. It is seen that accused are not to be rescued from where, from whom they have procured the contraband. Admittedly, the contraband has capability to destroy the social elements and it is common knowledge that the target of drug peddler and kingpins are the youth of the society. The said youth, who are the future of this Country have been led up the path of self destruction. Once

habituated, the user loses complete control of his life and is reduced to a very said State. All the latent, talent and capabilities available in the drug user are not allowed to bloom and the talents are not made available and permanently lose to the society.

19. It is seen from the material before this Court that quantity alleged is a commercial quantity and admittedly, they do not possess or any permit or licence to transport the same. The accused have not revealed who are the master minds or who is the supplier, whether by design or default. Even the respondent police have not been able to identify the master minds or the suppliers. The apathy of the investigating authority to this critical aspect is writ large on the face of their records and is a pathetic demonstration of their investigating services. Though the respondent police have acted with haste and seized the contraband. Their apathy in not identifying the master minds cannot be countenanced. It is seen that charge sheet has already been filed and prima facie this Court is of the opinion that the prosecution has placed sufficient material before the Court which probablises the chances of conviction of the accused. The reliance on the two orders enlarging the petitioners on bail is of no avail to the petitioners as it does not demonstrate as to the similarity of the facts in the case on hand. The only threat of similarity is seizure of various quantities of contraband. As rightly contended by the learned H.C.G.P. the offence is not merely against the State, but against the entire humanity and rightly deserves to be rejected and is accordingly rejected.