

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1212 of 2015

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioners/A.11 and A.12 seek to quash the order dated 04.02.2015 in CrI.M.P.No.2453 of 2014 in NCBF No.VIII/48/1/2/2014-NCB/Sub Zone/Hyderabad passed by Metropolitan Sessions Judge, Cyberabad at L.B.Nagar whereunder learned Judge dismissed the petition filed by the petitioners/A.1 to A.12 under Sec.167(2) Cr.P.C seeking bail.

2 a) On information, the officers of Narcotic Control Bureau (NCB) raided Sai Priya Chemicals, Bacharam Village, Hayathnagar on 07.07.2014 and found some of the accused persons loading four bags of Amphetamine into Innova Car bearing No.MH 04 EF 9130 and after serving notices under Sec.50 of NDPS Act, the officers conducted search and found 131 kgs of white coloured crystalline substance in four bags which on test proved positive for Amphetamine a psychotropic substance under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"). They also found Ethyl Acetic Acid, Hydrogen Peroxide, OM Nitro-5 bags and Tartaric acid which are used in manufacturing Amphetamine.

b) On further information, on the same night at about 11:30 pm, the NCB officials have also raided a godown at

Sy.No.149, Surmiguda, Revenue Village, Hyderabad along with mediators and found three bags being loaded in red colour car bearing No.AP 09 CU 2193 by three persons. On issuing notices under Sec.50 of NDPS Act, the officials conducted search and found in one bag Amphetamine and in remaining two bags Ephedrine a controlled substance. They also found raw material like Sodium boro hydrate.

c) On further information, on 08.07.2014, the NCB officials have raided a small godown where they found raw material like tartaric acids in the plastic drums for manufacturing of Amphetamine and they seized the same and then on 09.07.2014, the NCB officials went to M/s. Guna Sai Life Sciences situated at D.Nagaram, Choutuppal, Nalgonda District and found one K.Prasad and there they searched different wings of the factory and found huge number of drums, chemicals and bags were stored. The statements of the suspects were recorded under Sec.67 of N.D.P.S. Act and they were arrested on 29.09.2014 for the offences under Sec.22, 25-A, 28, 29 and 38 of N.D.P.S Act.

d) Thereafter the petitioners/accused 1 to 12 filed petition under Section 167(2) Cr.P.C for their release on the main ground that the officials failed to file charge-sheet within 60 days of initial remand.

e) While-so, the first report of the samples was received from Central Forensic Science Laboratory (CFSL) on

31.10.2014 which show that Ephedrine and Benzol Dehyde were detected in five samples and methamphetamine, sodium bisulphate were detected in one of the samples and sodium bisulphate was detected in another sample. On the request of the accused, again samples were drawn in the Open Court from one of the bags suspected to be containing Amphetamine and sent to CFSL, Hyderabad for conducting analysis. The said report was received on 31.12.2014 which showed that the analysis found not positive for the presence of methamphetamine, amphetamine, ephedrine, heroin, codeine, cocaine and thepaine.

3) It appears that basing on the second report, the accused argued that since the suspected substance is neither narcotic nor psychotropic substance and it was only a controlled substance, Sec.36-A of NDPS Act is not applicable and hence they deserve bail. Though the trial Court agreed with the above argument to that extent, however, denied them bail on the ground that the confessional statement of the accused would show their conspiracy to do an illegal act of manufacturing Amphetamine and in fact they were found in possession of raw material acquired for manufacturing Amphetamine and therefore, the offences under Sec.24 & 29 of NDPS Act would attract and thereby, Sec.36-A(4) of NDPS Act is applicable. Thus the trial Court dismissed the bail application.

Hence the present criminal petition.

4) Impugning the trial Court order, learned counsel for petitioners/A.11 and A.12 sought for bail under Sec.167(2) Cr.P.C mainly on the contention that the second analysis report ruled out the presence of narcotic and psychotropic substance, except the controlled substance and hence the petitioners/accused at best, can be held liable for the offences under Sec.9-A r/w Sec.25-A of NDPS Act, in which case, the penal provision contained in Sec.25-A provides a maximum punishment of Rigorous Imprisonment up to 10 years coupled with fine and if this sentence were to be taken into consideration, in the event of NCB officials failing to file charge-sheet within 60 days, the petitioners/A.11 and A.12 will be entitled to bail and the rigor of Sec.36-A (4) of NDPS Act will not be applicable to them because the said section applies to the cases covered by Sec.19, 24, 27-A or for the offences involving commercial quantity only. He further submitted that the petitioners/ accused have been in remand since 09.07.2014 i.e., for more than 60 days and hence they deserve bail.

5) Per contra, learned Special Public Prosecutor for NCB while filing his counter severely opposed the petition mainly contending that the statements drawn under Sec.67 of NDPS Act during the course of seizure of the contraband clearly indicate that the accused persons involved in a severe criminal conspiracy in their attempt to manufacture

Amphetamine, a psychotropic substance in commercial quantity and in fact they already manufactured substantial quantity of Ephedrine which can be used on further manufacturing of Amphetamine. He argued that whenever an offence is committed involving commercial quantity of narcotic drug or psychotropic substance, the limitation for filing complaint is 180 days and extendable to another 180 days on a memo being filed by the Public Prosecutor in terms of Sec.36-A (4) of NDPS Act and therefore, the trial Court rightly extended the remand of the petitioners and other accused to judicial custody. He would further submit that the investigation is in crucial stage and all of them are notorious accused and habitual offenders in manufacturing and selling narcotic and psychotropic substances and therefore, the investigation has to be continued to know the involvement of others and extent of their operations etc. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT**: A perusal of the impugned order reads as if the second report dated 31.12.2014 sent by CFSL, Hyderabad at the instance of the accused reads that the substance was not either Amphetamine or Methamphetamine. However, as pointed out by the trial Court, the report did not indicate as to what is the nature of the substance. Be that it may, the

petitioners/A.11 and A.12 relying upon the second report argues that since the report did not positively show the presence of a narcotic and psychotropic substance, what is contained must be held as a controlled substance, for which, punishment under Sec.25-A is up to 10 years, in which case, charge-sheet (complaint) has to be filed by the NCB officials within 60 days, which they failed to do so and hence they deserve bail. In this context, a perusal of the record would show that neither party produced the first and second sample reports said to be issued by CFSL for perusal of this Court. On the other hand, the impugned order reads that in the first report dated 31.10.2014 it was mentioned that Ephedrine and Benzol Dehyde were detected in five samples and methamphetamine, sodium bisulphate were detected in one of the samples and sodium bisulphate was detected in another sample. Some of these were psychotropic substances, whereas the second report dated 31.12.2014 reads that it found not positive for the presence of methamphetamine, amphetamine, ephedrine, heroin, codeine, cocaine and thepaine. As rightly pointed out by the trial Court, the report is in the negative form rather than specifying what the sample positively contained. It must be noted that the said specification is required for deciding whether the case falls under Sec.36-A (4) of NDPS Act or under Sec.25-A of NDPS Act. If the sample contains any one of the several psychotropic substances described in the

Schedule of the Act and if the accused conspired to manufacture them in the commercial quantity of the said psychotropic substance, certainly the case comes under Sec.36-A (4) of NDPS Act or otherwise if the sample does not show the presence of any one of the psychotropic substance as specified in the Schedule of the Act, then it may be held that the substance is a controlled substance as notified by the Central Government in which instance the case would fall under Section 25-A of NDPS Act. So in these circumstances, for deciding the petition, I am of the view that a positive opinion of the analyst is required specifying what substance is contained by the sample and whether it is a psychotropic substance or a controlled substance. Therefore, in these circumstances, the impugned order needs to be set aside and remanded to the trial Court.

8) Accordingly, the impugned order dated 04.02.2015 in CrI.M.P.No.2453 of 2014 in NCBF No.VIII/48/1/2/2014/NCB-Sub Zone/ Hyderabad is set aside and the matter is remanded to the trial Court with the direction that the trial Court shall send a fresh sample to the Central Forensic Science Laboratory, Hyderabad and obtain its positive opinion as to whether the sample contains a Psychotropic substance as narrated in the Schedule of the NDPS Act or it contains a controlled substance as notified by the Central Government and then decide the CrI.M.P.No.2453 of 2014 on merits.

As a sequel, Miscellaneous Petitions pending, if any,
shall stand closed.

U.DURGA PRASAD RAO, J

Date: 02.03.2015

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