

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.865 OF 2015

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ORDER:

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This Criminal Revision Case is filed by A.11 and A.12 challenging the order of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar in CrI.M.P.No.2453 of 2014 dated 23.4.2015, whereby the learned Metropolitan Sessions Judge dismissed the application filed by them under Section 167(2) of Cr.P.C. for enlarging them on bail.

The facts of the case are as follows:

The officers of Narcotic Control Bureau (NCB), on credible information, 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. 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 further found raw material like Sodium boro hydrate. On further information, on 08.07.2014, the 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.

Thereafter the 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. 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. 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.

Aggrieved thereby, the petitioners herein approached this Court by filing Crl.P.No.1212 of 2015 and a learned single Judge of this Court by order dated 2.3.2015 remanded the matter to the trial Court with the following observation:

“Accordingly, the impugned order dated 04.02.2015 in Crl.M.P.No.2453 of 2014 in NCBF No.VIII/48/1/2/2014/NCBSub 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 Crl.M.P.No.2453 of 2014 on merits....”

Pursuant to the said orders, samples were drawn from the seized objects in

the presence of the parties and were sent to CFSL on 12.3.2015. The CFSL after analyzing the samples sent a report dated 26.3.2015 stating that the sample tested is only Sodium bi Sulphate, which is a controlled substance. Pursuant thereto, the trial Court disposed of CrI.M.P.No.2453 of 2014 on 23.4.2015 holding that the petitioners are covered by the provisions under Section 36-A(4) of the Act. Aggrieved by the same, the petitioners filed the present revision.

On the date of hearing, it is brought to the notice of this Court that the charge sheet is already filed and the cognizance of offence was also taken on file on the basis of the said charge sheet. Even though the application for bail was preferred much prior to filing of charge sheet, in view of dismissal of the application by the trial Court and further direction of this Court in CrI.P.No.1212 of 2015, the said petition was disposed of on the date mentioned above.

In view of the changed circumstances and since the cognizance of offence is taken for the offences under Sections 9-A r/w Section 25-A, 28, 29 and 30 of the Act, it is clear that the offence for which now the petitioners charge sheeted are only under the Controlled Substances for which the punishment prescribed is upto ten (10) years without there being any minimum punishment prescribed. It is to be noted that the petitioners canvassed before the trial Court placing reliance on the chemical analysis report and prayed the Court to consider the offences lesser than the offences mentioned in the report. Admittedly, while the trial Court dealing with the bail petition the investigation was in progress, and whereas, in the F.I.R. it is mentioned that the offences are under Section 8(c) of the Act. Hence, the trial Court always of the view till conclusion of the investigation that the offences alleged are that of the offences mentioned in the report. Hence, the trial Court was not inclined to consider the application of the petitioners under Section 167(2) Cr.P.C.

Hence, taking into consideration the further developments in this matter, this Court instead of adjudicating on the revision preferred by the petitioners, convert the same as bail application under Section 439 Cr.P.C. and dispose of the same considering the merits of the allegations levelled against the petitioners. As observed above, now the offences for which the cognizance was taken against the

petitioners are only under Sections 9-A r/w Section 25-A, 28, 29 and 30 of the Act. Further till date, the respondent officials have not chosen to challenge the same. The petitioners are also not alleged to have involved in any such previous offences. Considering the said circumstances, this Court is inclined to enlarge the petitioners on bail with certain conditions.

In the result, the petition is allowed and the petitioners herein shall be enlarged on bail on condition of each of them executing a personal bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) with two sureties of Telangana State natives for the likesum each to the satisfaction of Metropolitan Sessions Judge, Cyberabad at L.B.Nagar. Further the petitioner shall report before the respondent-officials concerned daily between 10.00 a.m. and 5.00 p.m. until further orders.

Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

08.06.2015

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