

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9464 of 2017

ORDER:

1 This criminal petition is filed, by the petitioner/accused No.3, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.184 of 2017 on the file of the Station House Officer, Mangalhat Police Station Hyderabad registered for the offences punishable under Section 8 (c) r/w 20 (b) of NDPS Act.

2 The learned counsel for the petitioner submitted that the petitioner was falsely implicated in this case basing on the alleged confession of the accused Nos.1 and 2. She further submitted that nothing was recovered from the possession of the petitioner, therefore, it is a fit case to grant anticipatory bail to the petitioner.

3 *Per contra*, the learned Additional Public Prosecutor submitted that investigation is in progress, therefore, it is not a fit case to grant anticipatory bail to the petitioner.

4 The case of the prosecution is that on 03.08.2017 the S.I. of Police, Mangalhat Police Station, on receiving reliable information about transportation of ganja, after following due procedure, proceeded to Dhooth Khana, Dilawargunj, Mangalhat and apprehended two persons, who in turn disclosed their identify as accused Nos.1 and 2. The S.I. of Police seized 16 kgs of ganja from them and drew samples. It is the further case of the prosecution that during the course of interrogation, the accused Nos.1 and 2 disclosed that they were carrying ganja to sell it to the petitioner herein. After following the due procedure, the accused Nos.1 and 2 were produced before the concerned Court for judicial custody.

5 The petitioner filed CrI.M.P.No.2969 of 2017 on the file of the Court of the I Additional Metropolitan Sessions Judge, Hyderabad, under Section 438 Cr.P.C. and the same was dismissed on 19.09.2017.

6 The predominant contention of the learned counsel for the petitioner is that nothing was recovered from the petitioner. It is her further contention that the petitioner is shown as accused No.3 basing on the alleged confession of the co-accused.

7 In order to appreciate the contention of the learned counsel for the petitioner, this Court is placing reliance on the principle laid down by the Hon'ble apex Court in **State of U.P. v Amarmani Tripathi**¹, wherein the Hon'ble apex Court held at paragraph Nos.18 and 22 as follows:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi**, (2001) 4 SCC 280, and **Gurcharan Singh v. State (Delhi Admn.)**, (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, (2004) 7 SCC 528: (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and

¹ (2005) 8 SCC 21

elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598 and **Puran v. Rambilas**, (2001) 6 SCC 338.)”

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable. This Court had negatived a somewhat similar contention in **Kalyan Chandra Sarkar** thus: (SCC p. 538, para 19)

“19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

8 As per the principle enunciated in the case cited supra, the evidentiary value of the confession of co-accused will be considered at the time of trial only. However, the Court cannot exclude the confession of co-accused, while deciding bail petitions.

9 A perusal of the record prima facie reveals the role played by the petitioner in the commission of the offence. Taking into consideration the gravity of the offence alleged to have been committed by the petitioner and the principle enunciated in the case cited supra, this court is of the considered view that this is not a fit case to grant anticipatory bail to the petitioner.

10 In the result, the petition is dismissed.

T.SUNIL CHOWDARY, J

Date: 13th October, 2017

Kvsn

