

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.12682 of 2017

ORDER:

This petition is filed under Section 438 of Code of Criminal Procedure, seeking for grant of anticipatory bail to the petitioner under the apprehension that he would be arrested.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent.

The learned counsel for the petitioner submits that Crime No.NCBF.No.48/1/1/2017/HYD/SUB/ZONE of Intelligence Officer, Narcotics Control Bureau, Sub-Zone, Hyderabad was registered and the same was later numbered as SC.No.97 of 2017 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar. But, in the FIR, the name of the petitioner did not appear and consequently charge sheet was not laid against this petitioner.

Now the grievance of the petitioner is that the NCB officials are going to his house and threatening his wife and inmates of the house of the petitioner.

The learned Public Prosecutor filed counter denying the said apprehensions, but, however, *inter alia*, it is stated in the counter that A-2, Md.Dastagir, stated that he has been engaged in the drug trafficking business for the past seven years at the behest of this petitioner. Apart from the mobile number of this petitioner, no other details of the petitioner were mentioned in the statement of A-2. Also on obtaining call details pertaining to the mobile number from service provider, no details of the petitioner could be found out. The respondent officers are enquiring few persons in the above mentioned case. The role of the petitioner, inculpatory or exculpatory, will be known after enquiry by the respondent officers.

The said facts mentioned above would suggest that the NCB officials are bent upon making further enquiry into the matter and if that enquiry reveals the role of this petitioner they would definitely be entitled to arrest the petitioner. When there is no threat of arrest, as of now, seeking for grant of anticipatory bail is not warranted. That apart, the case involves commercial quantity of contraband and Section 37 of the NDPS Act lays a hurdle to grant even regular Bail. Unless the conditions under Section 37 of the Act are satisfied, no accused, who is allegedly involved in a crime involving commercial quantity would be entitled for bail, much less for anticipatory bail when there are certain conditions to be fulfilled for a person seeking bail, for the mere apprehension of arrest, a person cannot be allowed to seek for anticipatory bail. Allowing such prayer would defeat the theme underlying Section 37 of the Act.

The learned counsel for the petitioner submits that the Court below gave a direction to the petitioner to appear before the NCB officials and extend cooperation and seeking for a direction to the Police not to arrest when he appears as such.

But, in the considered opinion of this Court, the said direction is not warranted in the circumstances under which the petition was decided. "The Court recorded the apprehension of the petitioner that when he was being searched by the NCB officials and more particularly, when he feels that he is not at all involved in the alleged offence, then it is the bounden duty of the petitioner to appear before the NCB officials and explain the reasons of his innocence so far as this offence is concerned. It is only for the petitioner to appear before the NCB officials but he cannot be forced to appear before the NCB officials". Hence, by this order, it is made clear that the direction given by the Court below

for the petitioner to appear before the NCB officials need not be taken as a direction and the order of the Court below to that extent is set aside.

With the above observations, this criminal petition is disposed of. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

December 27, 2017
LSK

T. RAJANI, J

