

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3787 OF 2018

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioner, who is arrayed as accused No.1 in PCOR No.150 of 2016 on the file of Prohibition and Excise Station, Kodangal, Mahabubnagar District, for grant of anticipatory bail in the above Crime, registered for the offences punishable under Sections 8(c) R/w.22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and Section 34(a) of the A.P. Excise Act, 1968.

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor (T.S.) appearing for the respondents-State, and perused the record.

3. The case of the prosecution, in brief, is that on 07.04.2016 at about 12:05 P.M. the Prohibition and Excise Inspector along with his Staff, raided and detected a case of illegal possession and sale of toddy at House No.3-8, Nacharam Village, Kosgi Mandal, Mahabubnagar District, found accused Nos.1 to 4 in possession of 26 plastic crates each crate containing 12 toddy bottles and each bottle containing 650 ml. of toddy, seized the contraband, sent for examination and on verification of the said report found that the contraband seized contains fermented toddy adulterated with Alprazolam, which is a narcotic or psychotropic substance, which is injuries to public health.

4. Learned counsel for the petitioner/A-1 submits that the entire investigation is completed and nothing was seized directly from the possession of the petitioner and as such there is absolutely no material, prima-facie, to connect the petitioner that he committed any offence much

less the aforesaid offences and finally prayed to enlarge the petitioner on pre-arrest bail in the event of his arrest in connection with the above crime.

5. Learned Public Prosecutor (T.S.) appearing for the respondent-State contended that the petitioner is a habitual offender and in view of the bar under Section 37 of the Act, the petitioner is not entitled to claim pre-arrest bail as there is no reasonable ground for this Court to believe that the petitioner is not guilty of such offence and that he is not likely to commit such offence while on bail and finally prayed to dismiss the Petition.

6. As seen from the material available on record, the petitioner/accused No.1 along with accused Nos.2 to 4 were engaged in selling adulterated toddy and found 26 plastic crates each crate containing 12 toddy bottles and the same were seized and sent for examination and the report of Regional Prohibition and Excise Laboratory, Hyderabad, revealed that it contains fermented toddy adulterated with Alprazolam and therefore it appears that the petitioner has committed the aforesaid offences, prima-facie. Use of narcotic or psychotropic substance is injurious to the public health. In the instant Petition, the petitioner seeks for pre-arrest bail and grant of pre-arrest bail is not a matter of routine but in exceptional circumstances the Court can exercise such power to issue direction to the Police concerned to release the petitioner on pre-arrest bail in the event of his/her arrest and while exercising such power, the Court has to take into consideration the facts and circumstances including the gravity of the allegations made and its impact on the public.

7. The Apex Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra***¹ dealt with the factors and parameters that are needed to be taken for consideration while dealing with anticipatory bail and they are as follows:

- "(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- (vii) The Court must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which the accused is implicated with the help of Section 34 and 149 of the Penal Code, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the

¹ 2010 (12) TMI 1085 SC

normal course of events, the accused is entitled to an order of bail."

8. Having considered the above factors and parameters, and if the same are applied to the present facts of the case, the petitioner is not entitled to seek pre-arrest bail as Alprazolam, which is a narcotic substance, injurious to public health, is mixed in the toddy bottles, which will have the impact on the person, who consumes the adulterated toddy, and also on the society at large. Moreover, when a Crime is registered against the petitioner under Section 22 of the Act, and if the Court intends to enlarge the petitioner on pre-arrest bail, it has to record its satisfaction that there is reasonable ground to believe that the petitioner is not guilty of such offence and that he is not likely to commit such offence while on bail. But, at this stage, this Court is not in a position to record such satisfaction to enlarge the petitioner on pre-arrest bail since the petitioner was absconding from the date of seizure of contraband and is successfully avoiding his arrest for a quite long time.

9. Learned counsel for the petitioner further brought to the notice of this Court that the accused Nos.2 to 3 were already enlarged on bail by the learned Sessions Judge, Mahabubnagar and the learned I Additional Sessions Judge, Mahabubnagar, enlarged the accused No.4 on pre-arrest bail *vide* orders in Crl.M.P. No.430 of 2016 in P.C.O.R. No.150 of 2016 on 02.09.2016 and on this ground sought to allow this Petition by applying the principle parity. But, the question of applying the principle of parity for the offences committed under the Narcotic Drugs and Psychotropic Substances Act does not arise in view of the latest decision of the Apex Court in **Satpal Singh Vs. The State Of Punjab**² and the Apex Court held as follows at paragraph 14 of the Judgment:

² Crl.A.No.463 of 2018

“14. In any case, the protection under Section 438 Cr.P.C. is available to the accused only till the court summons the accused based on the charge sheet (report under Section 173(2) Cr.P.C.). On such appearance, the accused has to seek regular bail under Section 439 Cr.P.C. and that application has to be considered by the Court on its own merits. Merely because an accused was under the protection of anticipatory bail granted under Section 438 Cr.P.C. that does not mean that he is automatically entitled to regular bail under Section 439 Cr.P.C. The satisfaction of the court for granting protection under Section 438 Cr.P.C. is different from the one under Section 439 Cr.P.C., while considering regular bail.”

10. In view of the law laid down by the Apex Court in **Satpal Singh²** wherein it was held that principle of parity is not applicable to grant bail, and also taking into consideration the gravity of the offences, this Court is of the view that it is not a fit case to enlarge the petitioner on pre-arrest bail and, hence, the Criminal Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

Date: 10.04.2018.
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M.SATYANARAYANA MURTHY, J

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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