

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4943 OF 2018

ORDER:

This petition is filed, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, for grant of bail to the petitioner-accused No. 5 in S.C.No. 97 of 2017 on the file of the Court of Metropolitan Sessions Judge, Cyberabad, - cum – I Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar (for short, 'the Court below'), registered for the offences punishable under Section 8 (c) read with Sections 22 (c), 28, 29 and 31 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

The case of the prosecution is that the petitioner engaged accused No. 2 as an employee and directed to collect Alprazolam of 22.106 kilograms from accused No. 1 and handover the same to accused No. 3; that on credible information, on 05-03-2017, the police seized Alprazolam, which is a psychotropic substance, from the possession of accused No. 1 when he was about to handover the same to accused No. 2, who is an alleged employee of the petitioner, under a cover of panchanama and lifted samples as per the procedure; that on interrogation of accused Nos. 1 and 2, accused Nos. 3 and 4 were added as accused; that on the strength of statement of accused Nos. 1 and 2 recorded under Section 67 of the Act, the petitioner was also arraigned as accused on the ground that he was the main person who engaged accused No. 2 to collect Alprazolam from accused No. 1 on payment of Rs.5,000/- per each consignment and that after completion of

investigation, charge sheet was filed before the Court below and it is numbered as S.C.No. 97 of 2017 and pending for trial.

During hearing, learned Senior Counsel Sri Vedula Venkataramana appearing for the petitioner contended that, certain additional material is produced before this Court and in view of the additional material, the Court has to reconsider the request and pass appropriate order by enlarging this petitioner on bail.

The only material produced before this court is the statement of Md. Dastagiri, G. Vijaya Kumar recorded by the Investigating Agency under Section 67-b of NDPS Act.

Whereas, learned counsel for the respondent contended that, the statements were available at the time when the order was passed in CrI.P.No.3288 of 2018 and it is not any new material or additional material and prayed for dismissal of the criminal petition.

This Court passed a detailed order in CrI.P.No.3288 of 2018 dated 23.03.2018 and dismissed the petition filed by the very same petitioner. The additional material produced before this Court subsequent to the dismissal of the earlier petition is of no assistance to this petitioner to enlarge him on bail.

In “**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav**”¹ the Apex Court held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-

¹ AIR 2005 SC 921

ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

When a bail application is rejected there is no bar to entertain another application afresh since principle of *res judicata* has no application, however there must be some new ground to be made out to apply for bail again after rejection of earlier bail application (vide: “**Gama v. State of U.P.**”²)

In “**State of Tamil Nadu v. S.A.Raja**”³ the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

² 1987 Cr.L.J. 242 (All)

³ (2006) (Supp.) (Cr.L.) 25 (SC)

Similarly in “**Parvinder Singh v. State of Punjab**⁴” the Apex Court held that dismissal of earlier bail application would not render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail.

At the end, learned Senior Counsel Sri Vedula Venkataramana appearing for the petitioner submitted that the petitioner’s sister-in-law’s marriage is scheduled to be performed on 04.05.2018 at 10.45 a.m at Kothapalli Village, Nawabpet Mandal, Mahabubnagar District. This petitioner being the husband of elder sister of the bride, is required to attend the marriage and requested to grant temporary bail. Learned Senior Counsel Sri Vedula Venkataramana appearing for the petitioner also placed on record the marriage invitation to establish that the marriage of Muralidhar Goud with Radha is being performed on 04.05.2018 at 10.45 a.m.

Hence, taking into consideration the necessity of the petitioner to attend the marriage, an escort bail is granted to this petitioner for a period of four days, commencing from 03.05.2018 upto 06.05.2018. The

⁴ (2003) 14 SCC 615

Superintendent of Police, Central Prison, Cherlapally, Hyderabad is directed to provide two constables escorting this petitioner from 03.05.2018 upto 06.05.2018, subject to bearing expenses by the petitioner, as per rules.

Furthermore, the petitioner shall report to the Superintendent of Police, Central Prison, Cherlapally, before 05:00 PM on 06.05.2018.

In the result, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M.SATYANARAYANA MURTHY

Date: 02.05.2018.

SP

