

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.5530 & 5929 of 2018

COMMON ORDER:

The petitioner in CrI.P.No.5929 of 2018 is Nekkanti Venkateswara Rao-A1 and the petitioner in CrI.P.No.5530 of 2018 is G.Vijay Kumar-A3 in S.C.No.97 of 2017 on the file of the learned Metropolitan Sessions Judge, Cyberabad-cum-I Additional District & Sessions Judge, Rangareddy District at L.B.Nagar for the offences punishable under Section 8(c) r/w 22(c), 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. A perusal of the charge sheet, filed by the Intelligence Officer, Narcotic Control Bureau (for short, the 'NCB'), Hyderabad Sub Zone running in about 101 paragraphs with merely 50 pages that was taken cognizance by the learned Sessions Judge for the offences supra against four accused including G.Narayana (father of A3-G.Vijay Kumar) [enlarged on bail by order dated 10.11.2017] and Mohd. Dasthagiri-A2, in nut shell speaks that on 05.03.2017 at about 10.00 hours some secret and reliable information was received by the Intelligence Officer, NCB-Appukuttan (LW1) of a person by name N.V.Rao-A1 herein is in the process of synthesizing and selling around 20 kgs of Alprazolam and he is in talks with one Dasthagiri-A2 of Mehboobnagar and G.Vijay Kumar-A3 of Siddipet to sell the same for upwards of Rs.24,000/- per Kg and the hand-off is supposed to

happen on the road that leads to Rajendranagar, Hyderabad near the Poultry Experimental Station at around 13.30 hours of that day i.e., 05.03.2017 and the conspirators and the contrabond can be intercepted with a watch on the said road, that A1-N.Venkateswara Rao is a middle-aged, tall, wheatish-complexioned person who is rapidly balding and a pot belly, A2-Dasthagiri is tall, fair and with stained teeth, whereas Vijay Kumar is a shade darker than both of them and bespectatled and said information was reduced into typewriting and communicated to the Superintendent, NCBH (LW3) and having received further instructions from him of the officers constituted, proceeded to the road leads to Rajendranagar, Hyderabad from Attapur by around 13.30 hours and secured two independent panch witnesses viz., Sri Mohd. Sraaj Sheikh-LW4 and Sri Sheikh Tayyab-LW5 who are mechanics at Attapur and to the mediators said Appukuttan, Intelligence Officer, explained about received the reliable information and the purpose of their securing trap that the search and seizure operation to be conducted, if any; from their agreed and accompanied when reached Rajendranagar road near the Poultry Experimental Station, noticed three persons were conversing with each other and A1 is matching with physical description that was noticed handing over a white gunny bag to two individuals viz., A2 & A3 in match and from apprehension A1 disclosed his name, address and identity so also thereafter A2 & A3 respectively and they revealed that the information available with the NCB team and the list of team to intercept for search, if

any, and seizure. When individually questioned A1-N.Venkateswara Rao as to he was manufacturing any drugs in the recent past, he replied in the affirmative saying manufacturing Alprazolam and he had already made, stored and transported by bus a large cache upwards of 20 kgs that he had just handed over to A2 & A3 viz., Dasthagir and G.Vijay Kumar and when they questioned, they readily agreed with the statement given by A1 that the bag in their hands contained Alprazolam and they hand over the same to LW1-Appukuttan and A1 opened said white gunny bag and they found therein whitish-yellow colour powder. Further, he himself stated he is the sole owner of said chemical in question, it is without any grant or permission or licence for manufacturing or possessing and the Intelligence Officer Appukuttan when caused weighed, the electronic balance found the contents of the powder in the gunny bags together of 22.248 kgs and having seized, transferred into a transparent polythene sheet which the officers brought them and placed on a flat surface and it is found the contrabond of 22.106 kgs excluding the bag which they disclosed as Alprazolam and recorded the individual further statements of A1 to A3 and the Intelligence Officer Appukuttan from the entire contrabond took two representative samples of 05 grams each kept in transparent polythene zip bags, duly sealed with heat and packed in separate brown paper envelopes, gum-pasted, wax sealed and marked as samples S1 and S2 and the rest of the contrabond 22.096 kgs of Alprazolam transferred to a separate white gunny bags and

stitched up and placed in a brown carton box duly sealed and marked as P1 and cause affixed slips. Further issued Format Section 50 notices to A1 to A3 supra and explained to them in English and Telugu of a legal right to be searched in the presence of a Magistrate or Gazetted Officer, if they wish, which they waived of no need and the NCB officials can carry the search of persons and another personal searches found the Aadhar card or driving license or bank debit cards or business card or credit card or visa card or master card as the case may be with cell phones under the cover of panchanama. They were also served with summons under Section 67 of the NDPS Act for recording their statements which are only voluntary to give. Consequent to that A1-N.Venkateswara Rao appeared before the Intelligence Officer Appukuttan and made a voluntary disclosure that he was cautioned about his right of remaining silent and his voluntary statement thereafter given by him was reduced to writing giving several disclosures of the *modus operandi* in manufacturing and his particulars, address and dealing with the contrabond without license or permission and the transaction on hand how went on. A2-Dasthagiri also with such caution exercised made a voluntary statement and disclosed the same as also A3 with such caution made a disclosure and the same was reduced to writing. The search and seizure is intimated to the superiors under Section 67 of the NDPS Act. They were arrested having been served with arrest memos informing the details of the grounds of arrest and having been telephonically communicated to the family members

as mentioned in the arrest memos dated 07.03.2017 which is preceded by the seizure and followed by personal search later and subsequent voluntary disclosure statements in registration of the crime in NCB F.No.48/ 1/ 01/ 2017/ NCB/ SUB ZONE/ HYD. It also speaks about the contraband produced before the concerned Court on 08.03.2017 with arrested persons and they were taken to judicial custody. The samples were caused sent to the Director, Central Forensic Science Laboratory (CFSL), Ramanthapur, Hyderabad for chemical examination and report and obtained acknowledgment and collected call data and also conducted house search of A1, A2, A3 & A4 respectively with respective search authorizations served duly with no further contraband found in the said searches. The chemical examination report of CFSL dated 13.04.2017 confirmed the presence of Alprazolam in sample, which is a psychotropic substance, and the said report was received by the Superintendent, NCB, Hyderabad-LW3 on 18.04.2017. The memos served upon the Kranti Road Transport (P) Limited and the Milan Transport Company regarding the transport particulars of chemical material purportedly sent to Gulbarga and received from Gulbarga by N.Venkateswara Rao as the case may be pursuant to his voluntary disclosure statement dated 05.03.2017. It further shows about the serving of summons to several persons with reference to call data and other particulars as part of the investigation further by analysed the call data and scrutinized the documents and also undertaken

financial investigation under Chapter 5-A of the NDPS Act under intimation to SAFEMA.

3. The contentions in the bail application of A1 are that the prosecution case is untrue. The so-called seizure of the contrabond allegedly disclosed and search of persons and non contrabond seizure from search taken place on 05.03.2017 whereas arrest of A1 shown on 07.03.2017 and the alleged so-called disclosure or confession under Section 67 of the NDPS Act obtained under threat coercion and duress to the dictation of NCB officials under the guise of exercising powers under Section 67 of the NDPS Act and the petitioner-A1 retracted the same when he was produced before the Court for the first time for extension of remand (subsequent to the first remand), that the case of prosecution is concocted and invented to implicate the petitioner-A1 and he was taken into custody from his house situated in Jeedimetla area on 05.03.2017 at about 11.30 P.M. and produced before the Court with false allegation as if taken into custody at Rajendranagar between 1.30 P.M. and 3.45 P.M. and alleged seizure of the contrabond and mobile phone and the distance between Jeedimetla and Rajendranagar is nearly 40 kms and the so-called panchanama is a fabricated one and A1 never gone to Rajendranagar and it is a false case with no foundation. The petitioner-A1 filed Crl. M.P.No.1466 of 2017 under Section 91 Cr.P.C. to call for the call data including the tower locate of petitioner's cell phone which is said to be seized during the panchanama lodged between 1.45 P.M. to 3.45 P.M. on

05.03.2017 that was allowed by the learned trial Judge. The call data of the cell phone No.9290899180 including cell ID address produced by TATA Teleservices Limited shows the petitioner was not in Rajendranagar on 05.03.2017, but at various places in northern sides of Hyderabad in Quthbullapur Village and Mandal of Rangareddy District, whereas the prosecution case of seizure of the cell phone at Rajendranagar area and the cell data clinchingly proved no contraband seized from his possession much less at Rajendranagar and the case is a fabrication including the so-called disclosure statement under Section 67 of the NDPS Act by false implication suffice to say the limitations under Section 37 of the NDPS Act no way apply for no likelihood of finding guilty, from which for a reasonable conclusion on appreciation of material the Court can arrive and thereby, he is entitled to concession of bail. It is also the contention that the mobile phone of A3 is switched off at Karimnagar on 04.03.2017 and the mobile phone of A2 is switched off at Mahabubnagar on the previous night with no any phone calls between the three accused for a period of three months reflected from the phone call record produced by the NCB to say any alleged connecting link. In the retracted confession of petitioner-A1, he stated that the authorities removed the C.C. cameras before they enter into the house and subjected the A1 to beating in the presence of his wife and children despite their resistance by pushed them away. That shows the alleged apprehension of petitioner at Rajendranagar Poultry Experimental Station area is not correct. The petitioner-

A1 is in judicial custody since first week of March 2017 for about 16 months and the charge sheet is already filed and there is no purpose of keeping him in judicial remand and the dismissal of bail application by the learned Metropolitan Sessions Judge, Rangareddy District in Crl.M.P.No.1466 of 2017 is without assigning proper reasons which made the petitioner-A1 to seek for bail afresh.

4. Learned Special Public Prosecutor for the NCB filed counter in opposing the bail application by denying several contentions in saying effecting properly and meticulously as per law done and there is involvement substantially of the petitioner-A1, who is not entitled to the concession of bail from the bar under Section 37 of the NDPS Act and huge commercial quantity of the contraband, which is Alprazolam, seized from his disclosure from the conscious possession of the accused persons. It is also the contention that even taken for the arguments sake of the disclosure statement made voluntarily he is allegedly retracted by the so-called retracted version submitted later, the very seizure from the disclosure makes out the case. It is also the submission that Quthbullapur area and Rajendranagar area are very nearby and the petitioner-A1 cannot make a mountain out of moule hill therefrom to say the cell tower location of the cell phone No.9290899180 of TATA Teleservices call data belies the case to appreciate any such contention falsely.

5. Learned counsel for the petitioner-A1, in the course of different sittings of the arguments, on 03.07.2018 filed the additional material in USR Nos.41281, 41284, 41287, 41290 and 41292 of 2018.

6. The affidavit of A1's wife Smt. N.Rama Devi saying on 05.03.2017 at about 5.00 P.M., plane cloth police men about 12 to 15 came and knocked the door and forcibly entered into the house and when requested, they bluntly refused to answer and caught hold of A1 and tried to take away despite she and her children resisted by pushed them aside and beat her husband to their shocking and they made a search in the house and could found nothing, but taken away Rs.4.00 lakhs and gold big ear rings, Saibaba locket with gold chain.

7. The other affidavit of N.Sai Priyanka, W/o. Srinivas Rao who is no other than the wife of A1's brother of the self-same Flat No.302 of A1, Opp. IDPL Colony, Patwari Enclave, Balanagar, Hyderabad, saying that at about 7.00 P.M. one Mr. Hanmanth Rao came to her house with anxiety saying there is some trouble going on in the house of Rama Devi and when she rushed there, she found 3 to 4 plane cloth persons and when enquired them, one person disclosed his name as Appukuttan, NCB official, and he refused to give further replies and they were busy in removing the DVR of the Flat No.302 even she objected for the same and even the DVRs of the apartment were removed in her presence and taken away.

8. There is another affidavit of one R.Venu Madhava Rao of Flat No.405, Starlight Apartments where A1's residence is Flat No.302, saying on 05.03.2017 at about 4.00 P.M. when he came to the cellar, he found nearly about 8 to 10 plain cloth persons entered into the apartments and were seriously discussing with the watchman and when he asked them, they abused and warned him to move away and he entered into the office room where they have a DVR and other infrastructure and they removed the DVR and cables and taken away and also warned the watchmen when he asked said persons to enter their names in the regular register, but they refused to register and later he came to know that they are NCB officials came to the apartment and taken away the accused-N.Venkateswara Rao. He further stated that on the next day, said officials came and installed a new DVR in the apartments.

9. There is other affidavit of Y.Hanmanth Rao of Flat No.105, Meenakshi Residency which is of the nearby locality, saying he used to take the accused children daily to tuition in the evening and after completion of the tuition he bring back and drop at their house on salary basis and as usual on 05.03.2017 at about 6.00 P.M., when he came to the flat of accused, he found the door closed and when he knocked the door, two plain cloth persons came out and asked his details and when he stated to take the children to tuition, they threatened him to leave the place saying they are police officers and he come down due to fear.

10. The additional material filed further is Section 67 NDPS Act voluntary statement of A1 dated 05.03.2017, which is English typed one of three pages, where he signed in every page. At the last page of three at the end, he endorsed of the above statement has been typed as per his wish and he read over and understood and confirmed it as true and correct and it is his statement tendered out of his own choice only and not out of any threat coercion. The NCB official endorsed as it was recorded before him and then typed and read over by him to petitioner-A1 who made the statement. A perusal of it shows what he disclosed was reduced to writing and the same is neatly typed and read over and after he understood the same of confirmation signed with such endorsement on his own handwriting as true and voluntary. With this there are two statements under Section 67 of the NDPS Act, one is dated 05.03.2017 and the other is dated 07.03.2017 in relation to complicity of him to the crime with other accused, particularly A2 & A3.

11. No doubt, from perusal of the additional material affidavits referred supra in the attempt of learned counsel for the petitioner-A1 to say A1 was taken away from his house by the NCB officials on 05.03.2017 night, from what is referred supra the version of R.Venu Madhava Rao in his affidavit is the NCB officials came at about 4.00 P.M. on 05.03.2017 to the cellar of the Starlight Apartments, where A1 is the resident of Flat No.302 and Venu Madhava Rao is the resident of Flat No.405, he found nearly 8 to 10 persons in plane clothes and there was discussion between

them and the watchman and when he wanted to intervene, they asked him to move away; therefrom when he went to the office room, he found removal of the DVR and cables and taken away by refusing to sign in the regular register despite watchman asked. It shows the DVR and cables and other infrastructure from the office room of the apartments complex ground floor taken away at 4.00 P.M. itself by 8 or 10 persons, whereas the affidavit of N.Rama Devi speaks at about 5.00 P.M. 12 to 15 persons came inside by knocked the doors and when opened, they caught hold of her husband and were trying to take away they resisted and were pushed aside and her husband was beaten to their shocking. If such is the case, once taken away at 5.00 P.M. her husband A1 as per the affidavit of Rama Devi, is it believable of still by the time Y.Hanmantha Rao, asked the personnel, who was coming to take the children of A1 to tuition regularly by 6.00 P.M., allegedly came on that day at 6.00 P.M. and found the door of the accused flat closed and when he knocked, two plain cloth persons came out and asked him to leave saying they are police officials, for the officials or NCB officials otherwise, for not even the case of Rama Devi of some remain in the house or closed the door from inside and conducted any search or the like. From this, coming to the affidavit of N.Sai Priyanka, wife of A1's brother, resident of nearby area of Sai Diamond Residency, in her saying said Hanmanth Rao supra came to her at 7.00 P.M. with worry and informed of the trouble going on in the house of Rama Devi and when she run there, she found 3 or 4 plain cloth persons and one

of them disclosed as Appukuttan, NCB official and when she questioned, he failed to give reply and they were busy in removing the DVR of Flat No.302 despite her objection. Leave about this may be at best to serve as part of defence during trial from such defence examination by testing in cross-examination said versions to elicit the truth or otherwise of it and premature to express any opinion therefrom from said inconsistencies including with reference to the so-called cell tower location, alleged discrepancy with reference to the point of time by saying no correlation. Leave about the basic presumption of all official acts are duly performed unless shown contra and to demonstrate the same during trial, that too when it is the submission of learned Public Prosecutor of the Quthbullapur and Rajendranagar are side by side areas with almost same location. In fact, the petitioner-A1 even earlier filed the bail application and went unsuccessful viz., the dismissal order in Crl.M.P.No.1291 of 2018 dated 02.05.2018 with observation in relation to the so-called discrepancy in call data answered saying the call data cannot be taken as conclusive evidence as SIM card can be cloned and IMEI can be changed. It also referred about dismissal of the earlier bail application in Crl.P.No.1030 of 2018 by the High Court earlier to it and also dismissal of two earlier bail applications by the learned Metropolitan Sessions Judge in Crl.M.P.Nos.3470 & 3980 of 2017.

12. Having regard to the above and that too when Sessions Case is already numbered and pending for trial as S.C.No.97 of 2017 and in view of the dismissal of earlier bail application by this Court and thrice by the Court of Sessions including by answering the point now raised supra as discussed supra and even taken the so-called disclosure statement was retracted, there is basically from the prosecution material covered by Panchanama of 05.03.2017 apprehension and when questioned, the disclosure and a seizure, from the disclosure of the contrabond is Alprazolam, which is found the commercial quantity that was seized and duly collected sample, leave about from subsequent personal search what was found is not contrabond, but other material for which even shown *prima facie* compliance of Section 50 of the Act, there is nothing to grant concession of bail even the petitioner is in judicial custody since 16 months, but for to direct the learned Sessions Judge to expedite the trial from the charges framed, if any, as per the decision of the Apex Court in Thana Singh v. Central Bureau of Narcotics¹ and complete the same within four (4) months from the date of receipt of a copy of this order.

13. So far as the petitioner-A3 is concerned, the contentions in the bail application besides those covered supra further are that the so-called Section 67 disclosure statement is untrue and it was written by them and the signatures obtained by force and not a voluntary one and the entire case of prosecution finding them with contrabond or seizure is untrue and the petitioner-A3 is

¹ 2013(2) DCR CrI. 280 (SC)

falsely implicated and the call records of A1 show he was nearly 35 kms away to the alleged place of seizure and so far as the petitioner-A3 is concerned, on 04.03.2017 at 7.30 P.M. he was at Siddipet and thereafter, there were no telephone calls and the analysis report indicates presence of paracetamol and Alprazolam and it is to be treated as small quantity otherwise and there are no prior antecedents of his involvement in any such crime and he is in judicial custody almost since end of first week of March 2017 for sixteen months and entitled to the concession of bail.

14. The petitioner-A3 is undisputedly went unsuccessful before the learned Metropolitan Sessions Judge, Cyberabad-cum-I Additional District Judge, Rangareddy in Crl.M.P.No.1327 of 2018 where his bail application was dismissed on 02.05.2018 by also answering from the notification dated 18.11.2009 mentioning in the case of mixture the entire quantity is taken as the contraband and the ratio laid down in E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau² no way applies after the said notification came into force as also answered by the Apex Court in Crl.A.No.722 of 2017 dated 03.07.2017 and there are no merits in the contentions and the bar under Section 37 of the NDPS Act applies and thereby, not entitled to the concession of bail. The contentions now raised in the present bail application as referred supra in fact answered by the learned Sessions Judge and also answered by this Court in the previous paragraphs in dismissing the bail application of A1. Leave about this Court in detail even

² 2008 (5) SCC 161

answered when similar contentions raised in the batch of three Criminal Petitions for bail by common order dated 19.06.2018 in Crl.P.Nos.2900, 3020 & 5814 of 2018 the same was earlier even drawn attention to the counsel, who also referred to the same in the course of their respective submission.

15. Having regard to the above, the petitioner-A3 is also not entitled to the concession of bail, but for to direct the learned Sessions Judge to expedite the trial from the charges framed, if any, as per the decision of the Apex Court in Thana Singh's case (supra 1) and complete the same within four (4) months from the date of receipt of a copy of this order.

Accordingly, these Criminal Petitions are dismissed. Consequently, miscellaneous petitions, if any, pending in these Criminal Petitions, shall stand closed.

24.07.2018
MVA

Dr. B. SIVA SANKARA RAO, J