

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.7079 of 2018

ORDER:

The petitioner Brahmanandam Goud is A5 in Crime No.DRI/HZU/48D/ENQ-23(INT-14)/2017 on the file of the Director of Revenue Intelligence (D.R.I), Zonal Unit, Hyderabad. The crime is registered for the offences punishable under Sections 22, 25, 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The petitioner is seeking regular bail for second time before this Court from earlier bail application of him dismissed by the common order along with the bail applications of A1 & A2 in CrI.P.Nos.2900, 3020 & 5814 of 2018 dated 19.06.2018. Leave about even he went unsuccessful before the learned I Additional District & Sessions Judge, Medak at Sangareddy for regular bail vide dismissal order dated 16.05.2018 and is in judicial custody since 22.01.2018.

3. The contentions in the present bail application, filed on 05.07.2018 though in the bail application at last page before verification the date mentioned as if 06.06.2018 mistakenly, are that the petitioner-A5 is a businessmen doing real estate business and breadwinner to his family and he was implicated at the instance of the rival political group in the real estate business, though he has no any activity with the complicity to the alleged crime much less with other accused, that too not at the scene of offence much less any material of

any sort of abatement and the learned I Additional District & Sessions Judge, Medak at Sangareddy dismissed the earlier regular bail application without proper consideration so also by this Court by not proper appreciation of the facts, despite the charge sheet filed and its verification from served on the petitioner on 20.05.2018 no way shows any overt acts against him, and he is a chronic heart patient and his daughter aged six years to be admitted in school by him from his wife being a house woman, and A4 was already enlarged on bail and if at all there are any facts only against A4 of any complicity with A1 & A2 and nothing against the petitioner-A5.

4. Learned Special Public Prosecutor opposed the bail application by reiterating the observations in the earlier bail dismissal order in saying there are no grounds to the entitlement of bail from *prima facie* accusation and from bar under Section 37 of the Act.

5. Heard the learned counsel for petitioner and the learned Special Public Prosecutor. Perused the entire material on record.

6. A4 was no doubt granted bail by order dated 12.10.2017 in Crl.M.P.No.695 of 2017 by the learned I Additional Sessions Judge, Medak at Sangareddy and the cancellation of said bail sought by the Investigating Agency was ended in dismissal in Crl.P.10987 of 2017 by order dated 19.01.2018 by another bench of this Court. A3 was also granted bail by another Bench of this Court in Crl.P.No.1931 of 2018 dated 22.02.2018 and again on for being mentioned confirmed on 15.03.2018.

7. In fact, another single Judge Bench of this Court in granting bail to A3 in Crl.P.No.1931 of 2018 by order referred supra dated 22.02.2018 running only in two pages with seven paragraphs observed in paragraph No.3 as if it is the prosecution case of seized from A3 ganja of 18.55 Kgs less than commercial quantity, to say therefrom of A3 is in judicial custody since 29.07.2017 bail is granted.

8. Coming to the facts, in the case on hand the contrabond is not ganja, but Alprazolam. The common order of this Court in Crl.P.Nos.2900, 3020 & 5814 of 2018 referred supra dated 19.06.2018 in dismissal of bail application of the petitioner along with that of A1 & A2 running in 24 pages with 24 paragraphs at length discussed the legal position with reference to the facts in observing the petitioners therein not entitled to the concession of bail.

9. Now coming to the bail order granted to A4 by the Court of Sessions and cancellation of bail moved before the Court ended in dismissal by another Bench of this Court dated 19.01.2018 in Crl.P.No.10987 of 2017, the observations concerned are that though it is the contention of the prosecution agency in seeking cancellation of the bail granted to A4 by the Court of Sessions of not recorded a finding required under Section 37 of the Act of reasonable grounds of not possible to hold guilty, it is neither necessary nor desirable to weigh the evidence meticulously, but for from the material, reasonable grounds showed, to believe or not including of not likely to commit another offence and as per the record there is nothing to show after

grant of the regular bail, he violated any of the conditions or committed any other offence and he is not even manufacturer of the contrabond, but for let out the premises to say it is the other accused who indulged in manufacturing Alprazolam and not by the petitioner and whether he got knowledge or not is the matter to be considered during trial and that too he claims as layman and even from the expression of the Apex Court in **Dolat Ram v. State of Haryana**¹ for cancellation of bail overwhelming circumstances with cogent facts are required. In fact, against grant of bail to A3 in Crl.P.No.1931 of 2018 dated 15.03.2018 is concerned, as per the prosecution agency they filed the Criminal Appeal with Special Leave Petition (Criminal) before the Supreme Court and it is pending.

10. In fact, the contrabond involved is Alprazolam which is a commercial quantity. In the bail order granted by another Bench of this Court referred supra, it was wrong mentioned as if 18.55 kg of ganja instead of saying Alprazolam. Thus, what the concession availed by the accused A3 & A4 no way applicable to the petitioner-A5.

11. So far as the merits of the present bail application from dismissal of the earlier one concerned, the learned counsel brings to the notice of this Court that the statement of D.Srinivasa Goud-A4 dated 29.07.2017 recorded by the Senior Intelligence Officer under Section 67 of the Act mentions that in kazipet where there is a shed

¹ 1995 (1) SCC 349

the land of 1½ acre in S.No.353/AA besides another 1½ acre land he is cultivating though he got three sisters and one brother and his father is no more and all they are living in joint family and because of his financial constraint his sister's husband Brahmandam Goud-A5 introduced his friends Younus and Shakeel (A1 & A2), and that his brother-in-law Brahmandam Goud got toddy shop at Ismail Khan Pet. A1 & A2 supra in his Kazipet land raised a Zink sheet shed and asked him to keep the milk cattle there and they spent Rs.1.20 lakhs and raised the Zink sheet shed with two Zink sheet rooms and they kept their four buffalows there. A1 & A2 were preparing some material by installing the reactor by using the power supply from his agricultural three phase service connection and when he questioned them, they stated as it is the power to mix in toddy known as Alprazolam and even he resisted they recommended through his brother-in-law Brahmam with understanding to pay Rs.20,000/- per month to him by appointing him as watchman of the shed for their use for said powder manufacturing purpose. Even from that the petitioner-A5 is anxious of the manufacturing activity undertaken by A1 & A2 in the field of A4, his brother-in-law even in recommending to A4 to allow them to manufacture the Alprazolam there by establishing the reactor and providing the power supply from his agricultural service.

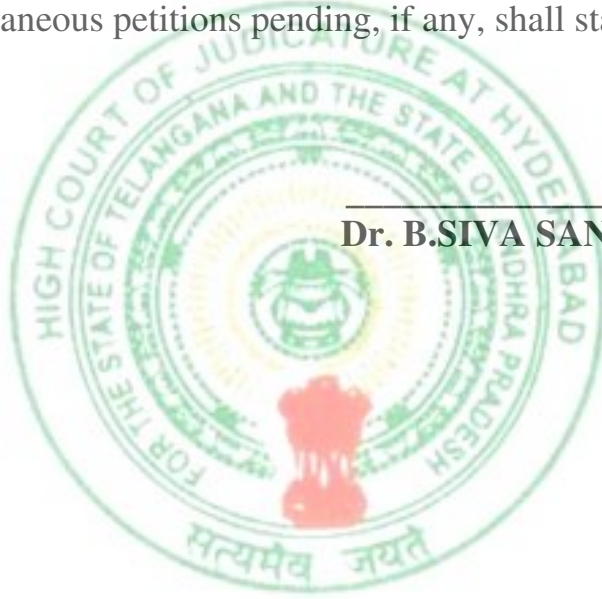
12. Once such is the case, petitioner-A5 cannot stand even at par with A4. Leave about any bail granted to A4 and the cancellation of bail application was ended in dismissal besides any bail granted to A3

under a mistaken impression of ganja not a commercial quantity, from which as can be seen the prosecution agency moved the Apex Court, there are no grounds much less with any changed circumstances to show entitlement, to grant bail.

13. Having regard to the above and in the result, this Criminal Petition is dismissed for no changed circumstances and from the case not comes within the exception to the application of twin requirements of bar to grant of bail under Section 37 of the Act.

Miscellaneous petitions pending, if any, shall stand closed.

06.08.2018
MVA



Dr. B.SIVA SANKARA RAO, J