

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7626 of 2018

ORDER:

The petitioner is Syed Nizamuddin @ Nizam, a Cab driver of Sultanpur Village, Sangareddy District is A1, among more than one accused, in Crime No.126 of 2018 on the file of the Bachupally Police Station, Cyberabad, Rangareddy District. The crime is registered for the offences punishable under Section 8(c) r/w 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, amended Act 9 of 2001 (for short 'the Act'). The petitioner is in judicial custody since 06.03.2018.

2. As per the prosecution case, on 06.03.2018 at about 1.00 P.M., based on some information about the transportation of material under the Act in white colour TATA Safari bearing registration No.AP-09-DP 2430 towards Nizampet from Bachupally having intimated to the superiors, the Station House Officer while conducting check at Prime Castel Apartment, Nizampet Road, Bachupally apprehended the petitioner-A1 Syed Nizamuddin @ Nizam supra and found 8 kgs of Phosphorus Penta Sulphide P2 S5 transporting in the car and when questioned, he made a disclosure about his possession of said material and the further disclosure about 400 kgs of said material available at godown at Sultanpur Village, Ameenpur Mandal, Sangareddy District and proceeded along with the panchas to said godown and seized 400 kgs of Phosphorus Penta Sulphide P2 S5 besides 200 litres of Benzene

Cyanide contained in blue colour drum and made a disclosure of the material suppliers are one Basheer of Bollaram and Satish of Chintal. It is therefrom on seizure of the contrabond after collection of samples having been taken the precautions and from said seizure the crime is registered and arrest of the petitioner-A1 is effected by following the formalities. Same revealed from the disclosure by A1 of the raw material in large scale supra is to use in preparing Alprazolam, a Psychotropic substance, for its sale that being used to mix in toddy and that Psychotropic substance is fetching Rs.2 to 3 lakhs per Kg for said purpose and also made further disclosure regarding the role of other accused besides the conversations between the accused persons including by Whatsapp messages and the other material in relation thereto.

3. The petitioner went unsuccessful earlier in seeking regular bail in Crl.M.P.No.1951 of 2018 by dismissal order dated 12.06.2018 of the learned Metropolitan Sessions Judge, Cyberabad-cum-I Additional District Judge, Rangareddy.

4. Heard the learned counsel for petitioner and the learned Additional Public Prosecutor representing the State of Telangana in opposing the regular bail and perused the material on record.

5. Undisputedly, the material seized is neither controlled substance nor Psychotropic substance or narcotic drug to apply directly any of the provisions of the Act. So far as Section 22 of the

Act referred in registration of the crime is concerned, it is punishment for contravention in relation to Psychotropic substances. It is only relevant if at all with Sections 28 to 30 of the Act and not otherwise to the case on hand. Section 25A of the Act to be read with Section 9A deals with controlled substances and the case on hand not covered any controlled substance in the seized material. Section 20 of the Act deals with the narcotic drug, that is not even the matter herein. From this coming to Sections 28 to 30 of the Act:

Section 28 of the Act reads as under:

28. Punishment for attempts to commit offences.- Whoever attempts to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

Section 29 of the Act reads as under:

29. Punishment for abetment and criminal conspiracy.- (1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

The other crucial Section 30 of the Act which reads as under:

30. Preparation.- If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of [sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or Psychotropic substance and from the circumstances of the case] it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would

have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid.

Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine.

6. The disclosure statement as contended by the learned Additional Public Prosecutor taken even as admissible under Section 67 of the Act and for no personal search admittedly involved to comply Section 50 of the Act and the Officer who detected the crime is the empowered Officer and not any subordinate authorised officer to him whereby the compliance of Sections 41 & 42 of the Act does not arise from only seizure from the disclosure under Section 43 of the Act read with Section 102 Cr.P.C.

7. However, the learned counsel for the petitioner-A1 contends that the so-called raw material allegedly taken for manufacture of controlled substance even for arguments sake taken under Section 67 of the Act, apart from not so admissible, is not even at preparatory stage and not even the attempt as to what quantity at what time chosen to manufacture and there is nothing to show any conspiracy to the commission of the accomplished Act of manufacturing or possessing or transporting etc of any Psychotropic substance. As the petitioner is in judicial custody since 06.03.2018, bail is thus to be granted for the bar under Section 37 of the Act has no application.

8. The learned Additional Public Prosecutor, in fact to support the contention of the quantity involved is a commercial quantity from reading of said disclosure statement of A1 as categorically stated of its market value in kgs of Alprazolam and the raw material is for manufacturing huge quantity in Alprazolam, placed reliance on earlier expression of this Court and the scope of Sections 28 to 30 of the Act in Crl.P.No.8441 of 2014 dated 04.08.2014 particularly paragraph No.19. The relevant portion of paragraph No.19 speaks as follows:

“Further, the observation of the learned Sessions Judge of Section 37 has no application is not correct, when it speaks the bar for the commercial quantity offences, leave about other specified sections referred therein and when conspiracy, preparation and attempt are the offences provided for punishment, when these offences shown involved for commercial quantity, the bar applies, but for if at all to say other than for conspiracy provided with punishment at par with substantive offence in the sentencing policy, from lesser sentence to preparation and attempt not outcome of conspiracy, to give such interpretation beneficial to the accused from the two views possible as per the cordial principle in the criminal jurisprudence. This conclusion can be taken support from the expression of the Apex Court in **Dadu Alias Tulsidas vs. State of Maharashtra** [2000 CrI J 619] while holding Section 32-A NDPS Act imposing bar against Section 389 Cr.P.C. for bail and suspension of sentence pending appeal is even unconstitutional; (which is also pending in reference from conflicting expressions in this regard) so far as parameters for bail pending appeal concerned, the norms of Section 37 NDPS Act must be followed for no other procedure of the twin requirements of the satisfaction of the Court mandatory being *sine qua non* of 1) there are reasonable grounds for holding that the accused is not guilty of such offence and 2) that he is not likely to commit any offence while on bail vide **Union of India vs. Rattan Malik** [2009 (2) SCC 624]; **Union of India vs. Shri Shiv Shankar Kesari** [2007 (7) SCC 798] and **Ratan Kumar Viswas vs. State of UP** [2009 (1) SCC 482]”

9. Having regard to the above, the preparation for a commercial quantity of Psychotropic substance also comes within the bar of Section 37 of the Act for the grant of bail. As such, the petitioner-A1 is not entitled to the concession of bail, but for to direct the trial Court for early disposal, as per the expression of the Apex Court in **Thana Singh v. Central Bureau of Narcotics**¹, within a period of five (5) months from the date of receipt of a copy of this order.

Accordingly, this Criminal Petition is dismissed.

27.08.2018
MVA



Dr. B. SIVA SANKARA RAO, J

¹ 2013(2) DCR CrL 280 (SC)