

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE THIRD DAY OF JUNE
TWO THOUSAND AND TWENTY ONE

:PRESENT:
THE HON'BLE JUSTICE G.SRI DEVI

CRIMINAL PETITION NO: 4030 OF 2021

Between:

Mohd. Ashwaq S/o. Mohd. Isaq,

Petitioner/Accused No.4

AND

The State of Telangana, rep. by its Public Prosecutor, High Court for the State of Telangana, at
Hyderabad.

Respondent/complainant

Petition under Sections 437 & 439 of Cr.P.C, praying that in the circumstances stated in the petition and the grounds filed therein, the High Court may be pleased to release the petitioner/accused No.4 on bail in Crime No. 17 of 2021 of Chatrinaka Police Station, Hyderabad, on such terms and conditions;

The petition coming on for hearing, upon perusing the petition and the grounds filed therein, and upon hearing the arguments of Sri Suresh Singh, Advocate for the petitioner and of the Asst. Public Prosecutor for the Respondent, the Court made the following;

THE HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.4030 of 2021

ORDER:

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, is filed by the petitioner/A4 seeking to grant bail to him in connection with Cr.No.17 of 2021 on the file of Chatrinaka Police Station, Hyderabad District, registered for the offence punishable under Section 8(c) and 20(b)(ii)(c) of NDPS Act, 1985.

2. Heard learned counsel appearing for the petitioner/A4, learned Assistant Public Prosecutor appearing for the respondent-State and perused the record.

3. It is alleged in the remand case diary that on 18.01.2021 at about 8.00 AM, the police Chatrinaka, on credible information, rushed to G.M.Colony and apprehended the accused, who were traveling in a Honda City Car, and seized 50 kgs of ganja from their possession and thereafter, registered a case against the accused.

4. Learned counsel for the petitioner/A4 submits that A1 to A3 were found in possession of 50 kgs of ganja, but not in possession of the petitioner, however, based on the confessional statement of A1, the petitioner has been arrayed as A4 and he has been languishing in jail from 22.01.2021. He further submits that as the entire investigation is completed, the custody of petitioner is not required for the purpose of any further investigation. He also submits that the petitioner is a law abiding citizen and ready to abide by any condition imposed by this Court in the event of his enlargement on bail.

5. Relying upon the judgments of the Apex Court in *State of Kerala v. Rajesh*¹, *Preet Pal Singh v. state of U.P.*² and *The State of (GNCT of*

¹ 2020 (12) SCC 122

*Delhi) Narcotics Central Bureau v. Chandha*³, learned Assistant Public Prosecutor appearing for the State opposed the petition contending that unless satisfied the requirement under Section 37 of NDPS Act, 1985, this Court cannot enlarge the petitioner on bail as a matter of course. He further submits that though the petitioner was not found in possession of the ganja in the present case, he was also involved in another criminal case in Cr.No.104 of 2019, wherein he was found in possession of 200 kgs of ganja along with the other accused. He also submits that as the petitioner was not found in possession of the alleged ganja in the present case, some stringent condition may be imposed in the event he is enlarged on bail.

6. In *Sheru v. Narcotics Control Bureau*⁴ a three Judge Bench of the Apex Court while granting bail to a person in a case filed under the Narcotic Drugs and Psychotropic Substances Act in view of unusual times of the COVID-19 pandemic, held as under:

"We have given a thought to the matter and there is no doubt that the rigors of Section 37 of the N.D.P.S.Act would have to be met before the sentence of a convict is suspended and bail granted and mere passage of time cannot be a reason for the same. However, we are faced with unusual times where the Covid situation permeates. We are also conscious that this Court has passed orders for release of persons on bail to de-congest the jail but that is applicable to cases of upto seven years sentence.

In the given aforesaid facts and circumstances of the case, we consider it appropriate to enlarge the appellant on bail on terms and conditions to the satisfaction of the Trial Court."

7. In view of the judgment of the Apex Court in *Sheru's case* (4 *supra*); having regard to the fact that the petitioner/A4 is in jail since 22.01.2021 and no contraband was seized from his possession in the

² 2020 (8) SCC 645

³ Cri.A.No.257 of 2021 (SLP (Cri.) No.670 of 2021)

⁴ Cri.Appeal Nos.585, 586 of 2020, dated 11.09.2020

present case, and also in view of the peculiar conditions of pandemic COVID-19 prevailing in the country, without delving into the merits of the matter, I am inclined to grant bail to the petitioner/A4.

8. The Criminal Petition is allowed and the petitioner/A4 is directed to be released on bail, subject to the following terms and conditions:

- (i) The petitioner/A4 shall be released on bail on his executing a personal bond to the tune of Rs.30,000/- (Rupees thirty thousand only) with two sureties for a like sum each to the satisfaction of the Chief Metropolitan Magistrate, Hyderabad.
- (ii) On such release, the petitioner/A4 shall appear before the Investigating Officer on 3rd Saturday of every month between 10.00 AM and 2.00 PM., from July, 2021 onwards, till completion of investigation and filing of the charge sheet.
- (iii) the petitioner/ A4 shall appear before the Court concerned personally on each date of hearing till conclusion of trial.
- (iv) the petitioner/A4 shall not indulge in any similar type of activities in future. If he is indulged in similar type of activities or involved in any other similar cases in future during pendency of the present case in Cr.No.17 of 2021 and Cr.No.140 of 2019, liberty granted to him shall stand cancelled automatically.
- (v) the petitioner/A4 shall not tamper with the prosecution witnesses.
- (vi) the petitioner/A4 shall co-operate with the investigating agency.
- (vii) the petitioner/A4 shall not misuse the liberty granted to him.

9. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

SD/- K. SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

K. S.
SECTION OFFICER

To,

1. The Chief Metropolitan Magistrate, Hyderabad.
2. The I Addl. Metropolitan Sessions Judge, Hyderabad.
3. The Superintendent, Chanchalguda Central Prison, Chanchalguda, Hyderabad.
4. The Station House Officer, Chatrinaka Police Station, Hyderabad.
5. Two CCs to Public Prosecutor, High Court of Telangana, at Hyderabad (OUT)
6. One CC to Sri Suresh Singh, Advocate (OPUC)
7. one Spare Copy

HIGH COURT

GSD,J

DATE: 03-6-2021

ORDER

CRL.P. NO. 4030 OF 2021



BAIL