

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION NO: 6793 OF 2020

Between:

Cherukuri Harsha Vardhan, S/o. Venkateshwar Rao, Aged about 29 years, Occ. Business, R/o. Singapore Town Ship, Block No.D-4, Flat No.306, Pocharam village, Ghatkesar Mandal, Malkajgiri District.

...PETITIONER/ACCUSED No.3

AND

The State of Telangana, Through S.H.O, P.S. Excise, Rep, by its Public Prosecutor, High Court at Hyderabad.

...RESPONDENT/COMPLAINANT

Petition under Section 437&439 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to enlarge the Petitioner/Accused No.3 herein on regular bail in Crime No.51 of 2020 of the PS Excise, Musheerabad, Hyderabad, for the alleged offence U/Sec.8(c) R/W 22 and 20(b)(ii)(B) of NDPS Act, 1985.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri V RAGHUNATH, Advocate for the Petitioner and the Additional Public Prosecutor on behalf of the Respondent.

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION No.6793 of 2020

ORDER:

This Criminal Petition under Sections 437 and 439 of Cr.P.C. is filed, seeking grant of regular bail to the petitioner, who is arrayed as accused No.3 (A-3) in Crime No.51/2020 on the file of Excise Police Station, Musheerabad, Hyderabad registered for the offences punishable under Sections 8(c) read with Section 22 and 20(b)(ii)(B) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act," or "Act").

2. Heard learned counsel for the petitioner/A-3 and learned Additional Public Prosecutor appearing for the respondent – State and perused the material placed on record.

3. With the consent of the learned counsel appearing for the parties, the criminal petition is taken up for hearing and disposal through Video Conferencing in virtual mode.

4. The learned counsel for the petitioner would submit that the petitioner has been falsely implicated in the case. It is the further case of the petitioner/accused No.3 that the respondent authority has implicated the petitioner in the above case, allegedly based on confession statement given by one Shiva Sena Reddy- Accused No.1 (A-1) and Meka Sai Vipin-Accused No.2 (A-2), who it is being claimed were found transporting 56 LSD blots each consisting of 150 micro grams and 2 small plastic bottles containing Hashish oil each of 12 grams, totalling 24 grams, when the respondent authorities were conducting route watch on the road in front of

RTC Hospital, Tarnaka, Secunderabad, on 29.11.2020 at about 3:15 p.m. Learned Counsel for the petitioner would submit that based on the alleged confessional statement said to have been made by the Accused No.1 and 2, of having purchased the quantity of Narcotic and psychotropic substance from the petitioner, the respondent authorities have come to the premises of the petitioner and conducted search and recorded an extra judicial confessional statement of the petitioner admitting the guilt and arrayed the petitioner as Accused No.3 (A.3) in the crime. Learned counsel for the petitioner submits that the confessional statement of the petitioner recorded by the respondent authorities cannot be used as evidence against the petitioner, as per the provisions of Criminal Procedure Code (Cr.P.C.). Learned Counsel for the petitioner would further submit that the authorities are required to follow the procedure prescribed under Section 42 and 50 of NDPS Act, scrupulously, and any failure to do so would vitiate the proceedings and the same cannot be sustained. In support of the contentions, learned counsel for the petitioner has placed reliance on the judgement of the Hon'ble Supreme Court in ***State of Rajasthan v. Mohan Lal***¹.

5. Learned Counsel for the petitioner would further submit that the alleged quantity of contraband seized from the petitioner is not of commercial quantity and since the petitioner was arrested on 29.11.2020 and has been in judicial custody since then, he may be enlarged on bail. It is also submitted by the learned Counsel for the petitioner that the investigation in the above case is completed

¹ (2015) 6 SCC 222

and thus retention of the petitioner in judicial custody is not required any further.

6. *Per contra*, the learned Additional Public Prosecutor would submit that the respondent authority based on reliable information regarding the illegal transportation, the possession and sale of drugs such as LSD (Lysergic Acid - Diethylamide) the team from the office of Assistant Commissioner of Enforcement, Hyderabad have conducted route watch on the road in front of RTC Hospital, Tarnaka and upon stopping the accused Nos.1 and 2 who were found driving one vehicle bearing registration No.TS 08 FD 2848, they were found carrying 56 LSD bottles and 24 grams of Hashish oil packed in two bottles of 12 grams each and since they claimed that they do not have any licence to deal with the same, the authorities have seized the said Narcotic Drugs and Psychotropic substance and also recorded their confessional statement.

7. Learned Additional Public Prosecutor would submit that based on the confessional statement of accused Nos.1 and 2, the authorities have proceeded to search the house bearing flat No.306, Block No.D-4, Singapore Township, Pocharam (v), Ghatkesar (M), Malkajgiri District, whereat the present petitioner is residing, as the said accused Nos.1 and 2 had claimed to have purchased the seized material from him. Learned Additional Public Prosecutor would further submit that when the authorities reached the premises as disclosed by accused No.1 and 2, being the place from where the seized Narcotic substance was sold and delivered to them, the authorities knocking the door, one young person opened the door and on seeing the authorities along with

accused Nos.1 and 2, he got afraid and tried to close the door. However, the authorities could stop the person from closing the door, thereafter the authorities disclosed to the said person the purpose of their visit. Further, the accused No.2 also identified the person who opened the door as the person who sold the seized Narcotic and Psychotropic substance to them and his name as Cherukuri Harsha Vardhan - petitioner herein. Learned Additional Public Prosecutor would further submit that the respondent authority after disclosing their identity to the petitioner have issued a search memo to the petitioner and took his signatures in the presence of two punch witnesses who also countersigned the search memo. Learned Additional Public Prosecutor would also submit that the petitioner was also informed of the provisions of NDPS Act relating to personal search and on his consent for being personally searched before the Gazetted Officer, the personal search of the petitioner was conducted in front of one of the Gazetted Officer in the raid team. Learned Additional Public Prosecutor would submit thus, the respondent authority followed the procedure prescribed for entry, search and seizure both under Section 42 and 50 of the Act, scrupulously, as the search and seizure is conducted by an officer, who is a gazette officer himself.

8. Learned Additional Public Prosecutor would submit that, though the personal search was conducted, no Narcotic substance was found on the person of the petitioner. However, in the search of the premises, the authorities found 200 grams of Hashish oil being stored in one Dabur Honey bottle and also recovered small bottle containing 12 grams of Hashish oil, in addition to 9 empty

bottles of 12 grams each with labels 999 Kcsari yellow. Learned Additional Public Prosecutor would further submit that the petitioner in the confessional statement given to the authorities has disclosed that he has been purchasing the Hashish oil from one person by name Karthik, resident of Visakhapatnam of Andhra Pradesh State for Rs.1,000/- per 10 grams and selling the same to needy people at Rs.2,500/- per 10 grams. Learned Additional Public Prosecutor would further submit that the petitioner also gave the mobile number of the said Karthik from whom he was purchasing the Narcotic substance. Learned Additional Public Prosecutor would submit that the quantity seized from the petitioner is in excess of small quantity as prescribed being only 100 grams in case of Hashish oil. Learned Additional Public Prosecutor would submit that the quantity seized from the petitioner being an intermediate quantity in excess of small quantity, the petitioner would be liable for imprisonment for a term which may extend to 10 years as per Section 20(b)(ii)(B) read and Section 22(b) of NDPS Act.

9. Learned Additional Public Prosecutor would further submit that in so far as the personal search of the petitioner is concerned, the authorities have followed the procedure prescribed under Section 50 of the NDPS Act, as Section 50 of the Act would be applicable only in case of search of a person as has been held by the Hon'ble Supreme Court in **State of H.P. v. Pawan Kumar**². Learned Additional Public Prosecutor would submit that while the accused No.4 in the above crime is absconding, the investigation is in progress and only two witnesses are examined and is pending

² [2005] 4 SCC 350

for examination of other witnesses. It is also submitted that the authorities are yet to receive the report from FSL authorities.

10. Having given due consideration to the submissions made as above, it is to be seen that NDPS Act, is a special enactment, and a complete code by itself. A reading of Section 37(1)(a) of the NDPS Act, specifically states that *"every offence punishable under this Act shall be cognizable"*. The Constitution Bench of the Hon'ble Supreme Court in **State of Punjab v. Baldev Singh**³, observed that *"Section 37 makes all the offences under the Act to be cognizable and non-bailable and also lays down stringent conditions for grant of bail"*. The natural corollary of the above observation of the Apex court would mean that, irrespective of quantity of contraband seized, all offences under the NDPS Act, irrespective of quantity of contraband involved would be non-bailable and for considering grant of bail, the court should be satisfied of existence of reasonable grounds.

11. In the facts of the present case, it is not in dispute that the authorities upon entry and search of the premises where at the petitioner is living, found the petitioner possessing 212 grams of Hashish Oil, in addition to the quantity that has been sold to Accused Nos.1 and 2. The said quantity of Hashish Oil seized from the possession of the petitioner / accused No.3, though is less than commercial quantity of 1 k.g. prescribed by the central government in its notification, would not absolve the petitioner of contravening the provisions of the NDPS Act and making him punishable for offences under Section 22(b) read with Section

³(1999) 6 SCC 172

20(b)(ii)(B) of the NDPS Act. Further, as per the scheme of the NDPS Act, since, the petitioner/accused is found possessing the prohibited substance, the provisions of Sections 35 and 54 of NDPS Act, would stand attracted, and a presumption is formed of committing an offence and a reverse burden is placed on the petitioner/ accused to prove the converse. In order to get over the presumption formed i) as to the culpable mental state as specified in Section 35 and ii) failure to account satisfactorily for possessing narcotic and psychotropic substance under Section 54 of the Act, learned counsel for the petitioner has sought to contend as to the respondent / investigating authority not adhering to the mandatory compliance of Section 42 of the Act, for entry, search and seizure at the petitioner's premises. However, the said submission of the learned counsel lacks merit, since the authority, who conducted entry, search and seizure being a gazetted officer himself and a member of the raid team, he is sufficiently empowered and authorized under Section 42 of the Act and no further compliance is required as sought to be contended in view of the judgement of the Hon'ble Supreme Court in **Sekhar Suman Verma v. Superintendent of NCB and Another**⁴. In so far as compliance with the provisions of Section 50 of NDPS Act, is concerned, the requirement under the provision is applicable only in relation to search of the person, as held in **State of H.P. v. Pawan Kumar (2supra)**, as reiterated by the Hon'ble Supreme Court in **Jeet Ram v. NCB**⁵. As seen from the statement of the petitioner / accused recorded, it has been mentioned that the petitioner was given the option notice and on exercise of option to

⁴ (2016) 11 SCC 368

⁵ 2020 SCC Online SC 735

be searched before the gazette officer, the personal search of the petitioner was undertaken before the Gazette Officer Sri. J. Ravi, Prohibition & Excise Inspector, who is available in the raid team and during such personal search, no narcotic substance on person of the petitioner / accused was found. Thus, the submission even on this ground has to fail.

12. Turning to the other submission of the learned counsel for the petitioner that an extra judicial confessional statement of the petitioner recorded by the respondent authority admitting to guilt, would not be admissible under the provisions of Cr.P.C., as such authority being a police officer, the said plea has to be considered in the course of the trial, and not for considering the *prima facie* case for grant of bail, having regard to the presumption raised under Sections 35 and 54 of the NDPS Act. Further, the statement of the petitioner/accused was recorded in the presence of independent witnesses and in as much as there is no acquaintance or enmity between the petitioner / accused and the authorities prior to the present crime, it would be highly improbable to assume that the petitioner has been falsely implicated in the crime. Thus, the claim of the petitioner that he is not involved in any crime much less in the present crime and that he has been falsely implicated cannot be accepted and is a self-serving statement. Since, it has been stated by the learned Additional Public Prosecutor that the petitioner along with Accused No.4, who is absconding, are involved in trafficking of Narcotic and Psychotropic substances and the investigation in the above crime is in progress, this Court is not inclined to enlarge the petitioner by granting regular bail.

13. In view of the conclusions arrived as above, the Criminal Petition is dismissed.

14. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

Sd/-CH.VENKATESHWARLU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XXII Additional chief Metropolitan Magistrate, at Secunderabad, Hyderabad.
2. The Station House Officer, Excise Police Station , Musheerabad, Hyderabad.
3. Two CCs to Additional Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
4. One CC to SRI. V RAGHUNATH Advocate [OPUC]
5. Two CD Copies
6. The Superintendent Central Prison Chenchalguda, Hyderabad

12/5/8

HIGH COURT

TVKJ

DATED:08/01/2021

ORDER

CRLP.No.6793 of 2020



DISMISSING THE CRIMINAL PETITION

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22/1/21
Hx