

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.138 of 2022

ORDER:

This petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/Accused No.2 in connection with Crime No.1339 of 2021 of Madhapur Police Station, Cyberabad, wherein the petitioner is alleged to have committed the offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "**NDPS Act**").

2. The case of the prosecution is that on 13.11.2021, the Sub-Inspector of Police, Madhapur Police Station, on credible information that some persons are in possession of huge quantity of narcotic drugs, he along with staff proceeded to the premises and found the petitioner (A-2) and A-1 under suspicious manner and on enquiry, they admitted that they are procured the narcotic drugs from A.3 to A.5, who are from Mumbai of Maharashtra State. Police seized 3 packets of MDMA, weighing 03 grams (each packet 01 gram), and arrested the accused under the cover of mediators report. Basing on the said report, the present crime was registered.

3. Heard Mr.T.Pradyumnakumar Reddy, learned senior counsel representing Sri T.Anirudh Reddy, learned counsel for petitioner, and learned Additional Public Prosecutor for respondent-State.

4. Learned senior counsel submits that the alleged contraband ganja seized from the petitioner is one gram of MDMA, which is not a commercial quantity. It is submitted that the petitioner was

arrested on 13.11.2021 and he has no criminal antecedents. He submits that even as per the panchanama, petitioner has purchased the contraband for consumption, as such, Section 22 of NDPS Act has no application and only Section 27 of NPDS Act applies to the petitioner, which deals with punishment for consumption of any narcotic drug or psychotropic substance, as such his case may be considered for grant of bail.

5. On the other hand, learned Assistant Public Prosecutor submits that Section 20 of the NDPS Act applies to the petitioner as he is in possession of the contraband. As such, the crime is registered under Section 20(b) of the NDPS Act. He does not dispute the fact that the petitioner has no criminal antecedents and the other accused are already arrested. He further submits that so far ten witnesses were examined and RFSL report is pending. As such, the petitioner is not entitled for bail.

6. It is appropriate to have a look at Section 27 of the NDPS Act, which reads thus:

27. Punishment for consumption of any narcotic drug or psychotropic substance.—

Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or

under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

7. Taking into the consideration the fact that the contraband that is seized is only one gram of MDMA, which is not a commercial quantity, as such there is no bar under Section 37 of the NDPS Act, and nothing is forthcoming that the petitioner is a habitual offender, this Court deems it appropriate to grant bail to the petitioner.

8. Accordingly, this Criminal Petition is allowed and the petitioner/Accused No.2 shall be enlarged on bail on his executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties for a like sum each to the satisfaction of the XII Additional Metropolitan Magistrate at Kukatpally, Cyberabad. On such release, petitioner shall appear before the Station House Officer, Madhapur Police Station, on every Sunday between 10.00 a.m. and 1.00 p.m. till the trial is completed.

As a sequel, all the pending miscellaneous applications shall stand closed.

7th January, 2022

PVD

LALITHA KANNEGANTI, J

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

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07.01.2022

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