

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NOs.1362, 1397, 1452 and 1455 OF 2022

COMMON ORDER:-

These petitions are filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioners/A.20, A.23, A.21 and A.22 respectively (though the petitioners are mentioned as A.19, A.22, A.20 and A.21) in the event of their arrest in connection with Crime No.10 of 2022 of Panjagutta Police Station, Hyderabad, registered for the offence under Section 8(c) read with 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. As per the complaint and the remand report dated 06.01.2022 and 20.01.2022, the allegations against the petitioners herein are that they are customers/consumers of A.1 and are addicted to consumption of cocaine and regularly were in contact with A.1 over Whatsapp call. They have purchased the cocaine drug from A.1 illegally for their consumption and the said drug delivered at different places at Hyderabad City. Thus, they have committed offence, which is punishable under Section 27 of the NDPS Act.

3. Heard Mr.B.Chandrasen Reddy, learned Senior Counsel, representing Ms/.Chandrasen Law Offices, Mr.D.Srinivas, learned counsel representing Mr.S.Ram Reddy, Mr.T.Pradyumna Kumar Reddy, learned Senior counsel, representing Mr.T.S.Anirudh Reddy and Mr.K. Surender, learned counsel representing Mr.R.Prasad, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned senior counsel appearing on behalf of the petitioners submits that as per the allegations in the remand report, it is the confession of A.1 that the petitioners are customers, who are regularly in contact with A.1 over Whatsapp call and they purchased the said cocaine drug from A.1 illegally for their consumption. It is submitted that the petitioners are alleged to have committed the offence under Section 27 of the NDPS Act and the punishment for the said offence is rigorous imprisonment for a term which may extend to one year, or with fine which may extent to twenty thousand rupees; or with both;. It is also submitted that in case of consumers, there is special protection under Section 64-A of the NDPS Act providing immunity from prosecution to addicts volunteering for treatment at pre-trial stage. Further, at post trial stage, Section 39 of the NDPS Act, provides the Court to release certain offenders on probation, when any

addict is found guilty of an offence punishable under Section 27 of the NDPS Act. It is also submitted that the petitioners have no criminal antecedents. In support of their contention that the anticipatory bail petition is maintainable, they relied on the judgment of the Apex Court in **Ragini Dwivedi @ Gini @ Rags v. State of Karnataka**¹. It is also submitted that the petitioners were implicated in this case falsely, basing on the confession of other co-accused. In view of the law laid down by the Apex Court in **Tofan Sing v. State of Tamil Nadu**², the confessional statement of co-accused cannot be taken into consideration. Hence, the petitioners case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that basing on the confessional statement of A.1, Section 29 of the NDPS Act was also added. A.1 has confessed that the petitioners were demanding and forcing A.1 to supply the drug. As such, Section 29 of NDPS Act is added for abetment and criminal conspiracy. He submits that the other accused were already arrested and in offences of this kind, if the petitioners are enlarged on pre-arrest bail, it would have an adverse impact on the society. He submits that the drug menace is increasing multifold day-by-day and the

¹ 2021 SCC OnLine SC 174

² (2021) SCC online SC 882

police are taking effective steps. At this stage, if the petitioners are granted pre-arrest bail, it would be very difficult for the prosecution to conclude the investigation. He further submits that the petitioners are maintaining Whatsapp group and are paying the amounts through phone, as such the phones are required by the prosecution. Hence, at this stage, the petitioners are not entitled for pre-arrest bail.

6. Admittedly, in this case, petitioners are alleged to have committed the offence under Sections 27-A and 29 of the NDPS Act. Further as per Section 39 and 64-A of the NDPS Act, the consumers of narcotic drugs are provided immunity at post-trial and pre-trial stage respectively. It is not the case of the petitioners that they are habitual offenders and nothing has been placed on record to show that the petitioners are involved earlier in other cases. As per the judgment of the Apex Court in **Ragini Dwivedi** (1 supra), anticipatory bail application is maintainable. Taking all these factors in to consideration, balancing the interest of the prosecution as well as the accused, this Court deems it appropriate to grant pre-arrest bail to the petitioners.

7. Accordingly, the Criminal Petitions are allowed. Petitioners/A-19, A-23, A-21 and A-22 shall surrender before the Station House Officer, Panjagutta Police Station, Hyderabad, in connection with Crime No.10 of 2022 within one week from today and on such surrender and executing personal bonds for a sum of Rs.50,000/- (Rupees fifty thousand only) each with two sureties for a like sum each to the satisfaction of the said Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted. The petitioners shall appear before the Station House Officer, Panjagutta Police Station, Hyderabad, on 1st and 3rd Sunday of every month between 10.00 a.m. and 1.00 p.m. till the charge sheet is filed. Further, the petitioners shall surrender their cell phones, shall cooperate with the investigation and shall abide by the conditions stipulated under Section 438(2) Cr.P.C.

Miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date : 22.02.2022

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