

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.3654 OF 2022****ORDER:**

This Criminal 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 who is arrayed as Accused No.2 in Crime No.984 of 2021 on the file of Station House Officer, Hayathnagar Police Station, Vanasthalipuram, Rachakonda registered for the offence punishable under Section 20(II)(A) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard learned counsel for the petitioner/Accused No.2 and the learned Public Prosecutor for the respondent-State. Perused the record.

3. The case against the petitioner is about illegal transport of Hashish Oil involving 4 kgs and 775 grams. The quantity is commercial quantity.

4. The sole ground raised by the learned counsel for the petitioner/Accused No.2 is that the police have failed to complete investigation and as on the 180th day no charge sheet was in fact

taken cognizance by the Court, for which reason the statutory right of bail accrues under Section 167 Cr.P.C. For the said reason, the petitioner and two others moved the learned Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar vide Crl.M.P.No.1783 of 2022 in Crime No.984 of 2022 seeking statutory bail under Section 167(2) of Cr.P.C. Learned Metropolitan Sessions Judge having considered the facts of the case found that 180 days in the case would be completed by 21.06.2022, whereas the charge sheet was filed on 20.06.2022. However, the said charge sheet was returned requiring the prosecution to file lab analysis report and the certificate of inventory prepared under Section 52-A of the NDPS Act and also to deposit the property.

5. As seen from the order itself, the cognizance of the charge sheet was not taken and returned on 20.06.2022 and as on the day of 21.06.2022 the statutory period of 180 days was completed and as on that date there was no charge sheet was taken cognizance by the Court admittedly.

6. Learned counsel for the petitioner relied upon a judgment in Rohtash @ Raju v. State of Haryana (CRR No.933 of 2022(O&M)) in

support of grant of statutory bail. However, learned Metropolitan Sessions Judge found that the said judgment was not applicable and could be distinguished on the facts, for the reason of there being no FSL report, and the investigating officer failing to file any FSL report along with the charge sheet. However, in the present case though FSL report was available, the same was not filed hence, returned.

7. Learned counsel for the petitioner/Accused No.2 has relied upon a judgment of the Hon'ble Supreme Court in *Achpal @ Ramswaroop & another vs. State of Rajasthan* in SLP No.6453 of 2018 dated 24.09.2018, the Hon'ble Supreme Court while discussing, the indefeasible right which accrues to the Accused on the completion of a mandatory period of 60, 90 or 180 days. As the case may be found at Para No.18 that "when there were no papers or the charge sheet in terms of Section 173 of the Code before the concerned Court, the Court has no other option but to grant bail under Section 167(2) of Cr.P.C. and such protection which is imminent under Section under Section 167(2) of Cr.P.C. cannot be refused, as the said protection is established by law".

8. The Hon'ble Supreme Court in *Sanjay Dutt vs. State through C.B.I. Bombay's* has termed the right of an accused to be released on bail under Section 167(2) as "indefeasible right". In the present circumstances of the case, when there are no documents, FSL report and other documents filed under Section 173 of Cr.P.C. the Court has no other alternative but to grant bail to the accused if the conditions mentioned under Section 167 Cr.P.C. are satisfied.

9. For the said reason, the order of the learned Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar in Crl.M.P.No.1783 of 2022 is set aside and the petitioner/Accused No.2 is granted bail subject to the following conditions:

- i) The petitioner/Accused No.2 shall execute 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 Metropolitan Sessions Judge, Cyberabad, R.R.District at L.B.Nagar.
- ii) The petitioner/Accused No.2 shall appear before the concerned Station House Officer on every Monday between 10.30 AM and 01.00 PM for a period of three (03) months or until filing of charge sheet, whichever is earlier.

iii) The petitioner/Accused No.2 shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

Miscellaneous applications, pending if any, shall stand closed.

K.SURENDER, J

Date: 29.06.2022
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