

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO.5969 OF 2022

ORDER:

1. This petition is filed to enlarge the petitioners/A1 and A2 on bail in Crime No.89 of 2022 of PS Abdullapurmet for the offence under Section 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').
2. The question that arises for consideration in the present application is whether the Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District was correct in dismissing the petition filed under Section 167(2) of Cr.P.C on the 181st day on the ground that the charge sheet was filed on the said date.
3. Briefly, the facts of the case are that on 26.02.2022, the petitioners/A1 and A2 were held by Abdullapurmet Police for being in possession of 76 kgs of Ganja along with other accused. The petitioners were remanded to judicial custody on 26.02.2022. The bail petition under Section 167(2) of Cr.P.C was filed on 26.08.2022, which is admittedly 181st day.

4. The learned Special Judge dismissed the petition under Section 167 (2) Cr.P.C, 1973 on the ground that initially charge sheet was filed on 20.08.2022 and the same was returned for compliance of objections. The said charge sheet was resubmitted on 26.08.2022, on 181st day.

5. Learned Sessions Judge further held that on the basis of the judgment of the Hon'ble Supreme Court in the case of **Serious Fraud Investigation Office v. Rahul Modi** and others (Criminal Appeal Nos.185-186 of 2022), if the charge sheet is filed within time, though cognizance is not taken by the Court, it should be deemed to have been filed on the said date.

6. In the present facts of the case, the charge sheet, though filed on 20.08.2022, the same as returned. As on 181st day, which is 26.08.2022, there was no charge sheet which was filed in the court and pending cognizance orders. The filing of the charge sheet is *sine qua non* for consideration of bail under Section 167(2) Cr.P.C irrespective of the Court taking cognizance or not. In the present case, though charge sheet was filed on 20.08.2022, the same was returned and as on the

181st day, there was no charge sheet on the file of the Court. In the said circumstances, the learned Sessions Judge erred in taking the date 20.08.2022 as the date of filing charge sheet, though no such charge sheet was on the file of the said Court on the 181st day, when petition under Section 167(2) of Cr.P.C was filed.

7. The Hon'ble Supreme Court in the judgment of Sanjay Dutt v. State through CBI¹ held that the right that is accrued under Section 167(2) of Cr.P.C is indefeasible. The said right would not extinguish for the reason of the charge sheet being filed on 181st day. On the very same day, i.e., 181st day, the right of bail accrued to the petitioner and accordingly filed the petition seeking bail. In **M.Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence** (Criminal Appeal No.699 of 2020), the Hon'ble Supreme court in fact held that the right of bail has to be informed to the accused. In the said circumstances, unless the police files charge sheet on or before 180th day, the statutory right of bail would cease to exist. Since the charge sheet in the present case was filed on

¹ 1994 SCC (5) 402

the 181st day on the very same day, on which day petition under Section 162(2) Cr.P.C was made, the right that accrues to the accused would not extinguish. In the event of the petition being filed on the 182nd day, it cannot be said that the right existed. However, in the present facts and circumstances of the case, the learned Sessions Judge has erred in dismissing the petition taking the date 20.08.2022 as the date of filing the charge sheet when it was returned and no such charge sheet was filed by 180th day.

8. For the said reasons, the order of the learned Sessions Judge in Criminal Miscellaneous Petition No.2311 of 2022 in Cr.No.89 of 2022 is hereby set aside.

9. In the result, the petitioners can be granted the relief of bail subject to the following conditions:

- i) The petitioners/Accused 1 and 2 shall execute personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties for a like sum each to the satisfaction of Metropolitan Sessions Judge, Cyberabad at R.R.District.

ii) The petitioners/Accused 1 and 2, after release shall appear before the concerned Court, on every date of hearing.

iii) The petitioner/Accused shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

8. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications, pending if any, shall stand closed.

Date: 15.09.2022
kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

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Dt.15.09.2022

kvs