

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.8973 OF 2021

ORDER:

This Criminal Petition is filed U/Sec.482 of Cr.P.C to quash the proceedings in C.O.R.No.69 of 2021 pending on the file of Ramayampet Excise Police Station, Medak District.

2. Heard Sri.Ponnam Ashok Goud, learned counsel for the petitioner and learned Public Prosecutor for the respondents/State.

3. The petitioner herein is the accused No.2 and he is partner of accused No.1 and he sold 1 kg of Narcotic Drug i.e., Raw Alprazolam to accused No.1 for an amount of Rs.4,50,000/- and accused No.1 transported the same to Medak Town to sell the same at high price to unknown person.

4. The learned counsel for the petitioner would submit that the Police had not seized the contra band from the possession of accused No.2. There is no allegation against the petitioner herein either in panchanama or crime occurrence report. The petitioner/accused No.2 has no relation with accused No.1. Basing on the confession statement of accused No.1, the Investigation Officer has included the petitioner as accused No.2 in the subject crime. Basing on the confession statement of co-accused, criminal proceedings cannot go on. With the said submissions, he sought to quash the proceedings in C.O.R.No.69 of 2021 pending on the file of Ramayampet Excise Police Station, Medak District, against the petitioner herein/accused No.2.

5. On the other hand, the learned Public Prosecutor referring to the counter affidavit filed by the Sub-Inspector of Police, Ramayampet Excise Station, Medak District would submit that the matter is at crime stage. There is specific

allegation in the COR and as well as in the panchanama that the petitioner herein/accused No.2 has sold 1 kg of Narcotic Drug i.e., Raw Alprazolam to accused No.1 for an amount of Rs.4,50,000/- and accused No.1 purchased the Narcotic substance from accused No.2, and accused No.1 transporting the same to Medak Town to sell out the same at high price to an unknown person. Thus there are specific allegations against the petitioner herein.

6. He would further submit that the petitioner herein had filed a petition in Criminal Petition No.7827 of 2021 U/Sec.438 of Cr.P.C seeking anticipatory bail and the same was dismissed on 09-11-2021. The petitioner herein had also filed in Criminal Petition No.8487 of 2021 seeking anticipatory bail and was dismissed as withdrawn on 25-11-2021. The said facts were suppressed in the present application.

7. The petitioner is not co-operating with the Investigating Officer and he is absconding and the petitioner has to cooperate with the Investigating Officer as and when required by him in concluding the investigation and instead of doing so, he filed the present application seeking quash of proceedings in C.O.R.No.69 of 2021 pending on the file of Ramayampet Excise Police Station, Medak District, and that too suppressing of filing of two Criminal Petitions seeking anticipatory bail. With the said submissions, the learned Public Prosecutor sought to dismiss the present petition.

8. The learned counsel for the petitioner relied upon principle laid down by the Hon'ble Apex Court in Judgment dated 10-01-2022 in Special Leave to Appeal (Crl.) No. 242 of 2022 (Arising out of Diary No. 22702 of 2020) in case of **State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & another and batch**. In the said case, confession statement of co-accused was recorded U/Sec.67 of NDPS Act, the High

Court has granted bails on the grounds of rigors of Section 37 of the Act, are not attracted. On examination of the facts referring to its principle in **Tofan Singh Vs. State of Tamil Nadu reported in (2021) 4 SCC 1**, the Hon'ble Apex Court held that:

"a confessional statement recorded U/Sec.67 of NDPS Act will remain inadmissible in trial of an offence under the NDPS Act."

9. In the present case, the Investigating Officer has not recorded the confessional statement of accused No.1. *Prima facie*, there are allegations even against the petitioner herein/accused No.2 that he is a supplier of 1 kg Narcotic Drug i.e., Raw Alprazolam to accused No.1. Therefore, the principle laid down by the Hon'ble Apex Court is not applicable to the facts of the present case.

10. Perusal of the record including the Crime Occurrence Report dated 29-09-2021 and also Panchanama

would reveal that on receipt of credible information, the Prohibition and Excise Officials have conducted Route Watch on 29-09-2021 between Ramayampet and Medak road and they have seized 1 kg of Raw Alprazolam in polythene cover from the possession of accused No.1 on his TVS Jupiter Two Wheeler. They have also registered C.O.R.No.69 of 2021 against the accused for the offences U/Secs.8 (C) r/w. 22 (C) of NDPS Act, 1985 of Ramayampet Excise Police Station, Medak District on 29-09-2021.

11. During the course of investigation, accused No.1 informed that he has purchased the seized property/contraband i.e., Raw Alprazolam from the petitioner herein / accused No.2 for an amount of Rs.4,50,000/- per Kg and transporting the same to Medak town to sell out the same for higher price to unknown person. Thus the name of the Narcotic substance, quantity, price etc., are specifically mentioned in panchanama itself. There are specific

allegations even against the petitioner herein / accused No.2. The Investigation Officer has not recorded the confession statement of accused No.1 U/Sec.67 of NDPS Act. Therefore, the contention of the learned counsel for the petitioner that the Investigation Officer has included the name of the petitioner herein in the subject crime basing on the confession statement of accused No.1, is not sustainable.

12. As stated supra, *prima faice* there are specific allegations against the petitioner herein. It is also relevant to note that the petitioner herein had filed a petition in Criminal Petition No.7827 of 2021 U/Sec.438 of Cr.P.C seeking anticipatory bail and the same was dismissed on 09-11-2021 on the ground that the petitioner herein/accused No.2 is the supplier of prohibited contraband and involved in doing business of ganja.

13. This Court directed the petitioner herein to surrender before concerned Court within two weeks and on such surrender and on filing application for regular bail, the Court concerned shall consider the same in accordance with law. The petitioner herein did not comply with the said Order and he has not surrendered before the Court concerned within stipulated time. On the other hand, he has filed second anticipatory bail petition vide Criminal Petition No.8487 of 2021 and the same was “dismissed as withdrawn” on 25-11-2021. The petitioner herein has suppressed the said facts in the present Criminal Petition. He has filed an application i.e., I.A.No.2 of 2021 seeking stay of all further proceedings in C.O.R.No.69 of 2021 including his arrest, which was denied by this Court vide Order dated 09-11-2021. Therefore, there is suppression of facts on the part of the petitioner herein / accused No.2, which is abuse of Court process of law.

14. As stated supra, *prima faice*, there are specific allegations against the petitioner herein. He is supplier of prohibited contraband of Raw Alprazolam in huge quantity of 1 kg and sold to accused No.1 @ Rs.4,50,000/- per kg. The matter is at crime stage. Investigation is pending. Admittedly, the petitioner is not co-operating with the Investigating Officer by furnishing information and documents as sought by him in concluding the investigation.

15. On the other hand, he is filing one petition or the other with an intention to scuttle the investigation, which is not permissible under law.

16. In **M/s Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra**¹, the Three Judges Bench of Hon'ble Apex Court referring to its earlier Judgments including **State of Haryana Vs. Bhajanlal**² laid certain conclusions, for the

¹ 2021 SCC OnLine SC 315

² 1992 AIR 604

purpose of exercising powers by High Courts under Section 482 of Cr.P.C which are as under:

“....

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under [Section 482](#) Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to

secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating

officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under [Section 482](#) Cr.P.C.. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under [Section 482](#) Cr.P.C. only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit

the investigating agency/police to investigate the allegations in the FIR.;

17. In view of principle of law laid down and also in view of the above discussion, this Criminal Petition is liable to be dismissed with costs.

18. Accordingly, this Criminal Petition is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only). The petitioner is directed to pay the above said amount to State Legal Services Authority, Telangana, within 10 days from today.

As a sequel, the Miscellaneous Petitions, pending if any, shall stand closed.

K. LAKSHMAN, J

Date: March, 28, 2022

KHRM

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.8973 OF 2021

March, 28, 2022

KHRM