

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.8300 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.486 of 2022 pending on the file of Station House Officer, S.R.Nagar Police Station, Hyderabad registered for the offence punishable under Section 8(c) read with Section 22 (C) and 27 of Narcotic Drugs and Psychotropic Substance Act, 1985.

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

3. The case of the prosecution is that on 04.07.2021 at 1.00 p.m, the Additional Inspector of Police, filed a complaint stating that the this petitioner and two others were caught with ten grams of MDMA drug each. The said drug was found on the body of the this petitioner and others. Such bodily search was made before the Gazetted Officer.

4. Learned counsel for the petitioner submits that ten grams of MDMA drug was seized, which is not a commercial quantity. For the reason of ten grams not falling within the definition of commercial quantity as per 2(viia) of Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as follows:

"2 [(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;"]

5. He further submits that as per the definition, quantity greater than the quantity specified by the Central Government by notification is commercial quantity. When the notification states that ten grams is commercial quantity, by virtue of the definition of commercial quantity under the NDPS Act, anything above ten grams is commercial quantity and ten grams cannot be said to be commercial quantity. He further states that same is the case with the small quantity, which is defined under Section 2[(xxiia) of the Act which reads as follows;

"small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;]

6. He also submits that the said definitions 'small quantity' and 'commercial quantity' were inserted with effect from 02.10.2001. The MDMA drug was notified at serial No.134 of the schedule that 0.5 grams is 'small quantity' and 10 grams as 'commercial quantity'. He further submits that since the notification states that ten grams as 'commercial quantity' anything above ten grams is 'commercial quantity'. He submits that this Court by order dated 17.08.2022 in Crl.P.No.6701 of 2022 granted bail to Accused No.1.

7. The argument of the learned counsel for the petitioner, though appears attractive, has no basis. Both the definitions have to be read in consonance with the notification. For small quantity and Commercial quantity, whatever is stated in the notification of 'small quantity' and 'commercial quantity' would be the said quantity. In this case, 0.5 grams and 10 grams would be 'small quantity' and 'commercial quantity' respectively. The definition under the NDPS Act has to be read in the manner that 10 grams which is notified would be 'commercial quantity' and not anything above and over the quantity of ten grams. For the said reason, the argument of the learned counsel for the petitioner that over and above the notified

commercial quantity would be 'commercial quantity' under the definition of NDPS Act cannot be accepted.

8. However, in the present case, as seen from the complaint, three substances were seized from three different persons. Without conducting any preliminary test or as to how the Investigating Officer has come to a conclusion that three substances were similar and MDMA drugs are not stated. The procedure to be adopted by the Investigating Officer when drugs are seized from three different people should be to draw samples separately and cannot mix them. Under the Standing Orders any drug, which is seized in separate packets, separate samples should be drawn. There is no basis for mixing three substances seized from three different persons and drawing samples without conclusive evidence of the substances seized being the same. No reasons are mentioned in the remand report as to how the officer concluded that the three substances are the same. For the said reason, the petitioner is entitled to be released on bail on the following conditions.

i) The petitioner/Accused No.2 is directed to be released on bail on his executing personal bond for Rs.50,000/- (Rupees Fifty

Thousand only) with two sureties each for a like sum, among which one is local surety and the other is native surety, to the satisfaction of III Additional Chief Metropolitan Magistrate at Nampally.

ii) After release on bail, the petitioner/Accused No.2 shall appear before the concerned police station on every Monday between 10.00 A.M to 1.00 P.M, for a period of three 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.

9. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications, pending if any, shall stand closed.

K.SURENDER, J

Date: 22.09.2022
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