

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9963 of 2021

ORDER:

This 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/Accused No.4 in connection with Crime No.1339 of 2021 of Madhapur Police Station, Cyberabad, wherein the petitioner is alleged to have committed the offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "**NDPS Act**").

2. The case of the prosecution is that on 13.11.2021, the Sub-Inspector of Police, Madhapur Police Station, on credible information that some persons are in possession of huge quantity of narcotic drugs, he along with staff proceeded to the premises and found the A-1 and A-2 under suspicious manner and on enquiry, they admitted that they are procured the narcotic drugs from A-3 to A-5, who are from Mumbai of Maharashtra State. Police seized 3 packets of MDMA, weighing 03 grams (each packet 01 gram), and arrested the accused under the cover of mediators report. Basing on the confession of A-1 and A-2, petitioner is arrayed as A-4.

3. Heard Sri Suresh Lal, learned counsel for petitioner, and learned Additional Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that petitioner is alleged to have committed the offence under the provision of NDPS Act and it is alleged that 20 grams of MDMA is seized from the possession of petitioner and he sold the same to A-1 to A-3. He

submits that police while conducting search and seizure failed to follow the procedure contemplated under the provisions of NDPS Act. He submits that in the remand report of A-1 to A-3, it is stated that police officer has received information at 2.30 p.m. and immediately General Diary entry was made and proceeded to Westin Hostel, Madhapur and there they arrested A-1 and A-2. He submits that in the F.I.R it is mentioned that General Diary entry was made at 1700 hours, which shows that for statistical purpose, this case is foisted against the petitioner. He submits that basing on the confession of A-1 and A-2, petitioner was arrested and in the remand report, it is stated that Sub Inspector of Police, Madhapur (LW16) have ascertained the identity and full details of accused and when he along with his staff were trying to search their pockets, they admitted that they are in possession of drugs. He submits that LW16 informed to petitioner that he has right to be searched before the Magistrate or a Gazetted Officer, for which he agreed for Gazetted Officer, on that LW16 served notice to them and Raja Gopal Reddy, Inspector of Police, Raidurgam PS, Cyberabad (LW10) was called to that place and he introduced himself as Gazetted officer to them and the same is in violation of Section 50 of NDPS Act.

5. In support of his contention, learned counsel relied on the judgment of the Kerala High Court in **M.C. Ussain Vs. State of Kerala**¹, wherein it was held that when P.W.1 caught hold of waist of accused, he informed that he was in possession of brown sugar, so it can be rightly said that body had been searched by P.W.1 by putting his hand on the waist of accused and thus search had

¹ 1999 Cri.L.J. 630

been commenced by P.W.1 before ascertaining the willingness of accused as to whether he liked to be searched in the presence of a gazetted officer or a Magistrate. As there is clear violation of Sections 42 and 50 of NDPS Act, Kerala High Court acquitted the appellant. Learned counsel submits that petitioner is innocent, he is unconnected with the crime and he is falsely implicated in this case. He submits that petitioner was arrested on 17.11.2021 and since then he is languishing in jail, as such his case may be considered for grant of bail.

6. *Per contra*, learned Assistant Public Prosecutor submits that even in the F.I.R, time of occurrence of offence is mentioned as 2.30 p.m. and after information is received, crime was registered at 1700 hours and the same was carried out in the General Diary also. He submits that basing on the confession of A-1 and A-2, petitioner was arrested and arrayed as A-4 and 20 grams of MDMA drug was seized. He submits that police while conducting search and seizure have followed the provisions of NDPS Act and there was no violation of any of the provisions of NDPS Act. He submits that contraband that is seized is a commercial quantity and he is getting the contraband from Mumbai for selling the same. He submits that petitioner is a habitual offender and he was involved in Crime No.42 of 2021 of Nampalli Police Station and in that case he was released on bail in May, 2021 and later, he is indulged in this case, as such the petitioner is not entitled for bail.

7. Having heard the learned counsel on either side, perused the entire material on record.

8. While granting bail for the offence under NDPS Act, the Court shall see that twin conditions as mentioned in Section 37 of NDPS Act are satisfied or not. Further, there are stringent conditions for grant of bail, the other provisions of NDPS Act have also to be followed in the same manner. It is the contention of learned counsel for petitioner that there is no compliance of Section 50 of NDPS Act, but as per the remand report, petitioner was informed about his right either to be searched before a gazetted officer or a Magistrate and the petitioner gave his consent to be searched in the presence of a gazetted officer, as such LW10 Inspector of Police, Raidurgam Police Station was called to that place and he acted as gazetted officer. Hence, *prima facie*, it appears that police have complied with the provisions of Section 42 and 50 of NDPS Act. Further, judgment relied on the learned counsel for petitioner in **M.C. Ussain's** case (*supra*) is not applicable to the facts of this case. Since the contraband that is seized comes under commercial quantity and petitioner failed to satisfy the twin conditions as per Section 37 of the NDPS Act, this Court is not inclined to grant bail to petitioner.

8. Accordingly, this Criminal Petition is dismissed.

LALITHA KANNEGANTI, J

7th January, 2022

PVD

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07.01.2022

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