

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.10219 OF 2021

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioner/A.1 in the event of his arrest in connection with Crime No.798 of 2021 of Raidurgam Police Station, Cyberabad Commissionerate District, registered for the offence punishable under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "**NDPS Act**").

2. The case of the prosecution is that on 22.12.2021 at about 1600 hours, while the complainant-Sub-Inspector of Police, Raidurgam Police Station, was conducting the vehicle checking along with his staff nearby AIG Hospital, Babu Khan Lane, one person wearing black colour bag was coming suspiciously and suddenly diverted his movement, on that they caught hold him and checked him thoroughly and found 385 grams of dark green coloured leaves. They seized the same and arrested the accused under the cover of mediators report. On enquiry, the accused stated that he purchased the said ganja from the petitioner. Basing on the said report, the present crime was registered.

3. Heard Mr.K.Chidambaram, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that 385 grams of dark green ganja leaves is recovered in this crime. He submits that there are two

panchanamas. As per the first panchanama, the Investigating Officer's name is Mr.B.Pramod Kumar and the date and time is 22.12.2021 at 1800 hours and as per it, they have recovered the contraband from A.2. He submits that while conducting search and seizure, the police failed to follow the procedure contemplated under Section 50 of the NDPS Act. He further submits that absolutely there is no whisper that personal search was done before the Gazetted Officer or whether the accused was informed to be searched before the Gazetted Officer. He submits that the second panchanama was conducted on the same day at 2030 hours and the Investigating Officer's name is mentioned as Ch.Venkatesh, Sub-Inspector of Police, Raidurgam. In the first panchanama, from whom A.2 has purchased was silent and in the second panchanama, it is stated that A.2 has purchased the contraband from the petitioner and A.2 was carrying black cover bag. This fact is not mentioned in the first panchanama. He further submits that these two panchanamas are in respect of the very same accused i.e., A.2, which shows that for statistical purpose the petitioner is implicated in this case falsely. Hence, the petitioner's case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that though there are two panchanamas filed by the petitioner, in the first panchanama crime number is not mentioned. He submits that in the second panchanama crime number is mentioned. He further submits that there is only one panchanama. It is submitted that investigation is pending and so far five witnesses were examined. As the offence is under NDPS Act, pre-arrest bail is not maintainable.

6. Even as per the contention of the learned Assistant Public Prosecutor there is only one panchanama and in the other panchanama, crime is not mentioned, has no legs to stand for the reason, the un-numbered crime panchanama what the learned Assistant Public Prosecutor has referred is mentioned in the remand report, which throws any amount of doubt on the case of the prosecution. Though this Court generally not entertaining the petitions for pre-arrest bail in NDPS Act cases, in view of the peculiar facts and circumstances of the case, this Court deems it appropriate to grant pre-arrest bail to the petitioner.

9. Accordingly, this Criminal Petition is allowed. Petitioner/A.1 shall surrender before the Station House Officer, Raidurgam Police Station, Cyberabad Commissionerate, in connection with Crime No.798 of 2021 within one week from today and on such surrender and executing a personal bond for a sum Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, he shall be released on bail. It is made clear that no further extension of time will be granted.

Consequently, miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :06.01.2022

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