

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NOS.9632, 9717, 9716 & 9739 OF 2022

COMMON ORDER:

Crl.P.No.9632 of 2022:

1. This Criminal Petition is filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short “Cr.P.C”) seeking regular bail to the petitioner/A1 in SC.NDPS.No.199 of 2022 on the file of Special Sessions Judge for the trial of cases under Narcotic Drugs and Psychotropic Substances Act-cum-I Additional Sessions Judge at Kothagudem (arising out of COR.No.103 of 2022, Prohibition and Excise Station, Bhadrachalam), for the offences punishable under Section 8(c) r/w.20(b) (ii) (c) of the NDPS Act, 1985.

Crl.P.No.9717 of 2022:

2. This Criminal Petition is filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short “Cr.P.C”) seeking regular bail to the petitioner/A1 in SC.NDPS.No.18 of 2022 on the file of the Principle Sessions Judge (Spl.Judge for NDPS Cases at Jangaon) (arising out of Crime No.54/2022, Bachannapet Police Station, Jangaon), for the offences punishable under Section 8(c) r/w.20(b) (ii) (c) of the NDPS Act, 1985.

Crl.P.Nos.9716 & 9739 of 2022:

3. These Criminal Petitions are filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short “Cr.P.C”) seeking regular bail to the petitioners/A1 & A3, respectively, in SC.No.169 of

2022 on the file of the Metropolitan Sessions Judge, Cyberabad at Hayathnagar, Ranga Reddy District (arising out of Crime No.1082 of 2021, Vanasthalipuram Police Station, Rachakonda), for the offences punishable under Section 8(c) r/w.20(b) (ii) (c) of the NDPS Act, 1985.

4. Heard learned counsel for the petitioners and learned Assistant Public Prosecutor for the respondent-State and perused the record.

5. All these petitions seeking bail are disposed off by way of this common order directing the concerned Courts and also the Agencies involved in prosecuting the accused.

6. In several cases, it is found that inspite of directions of this Court to conclude trial expeditiously or fixing a time schedule to complete trial, the Courts are not able to adhere to the directions of this Court. When called for explanation, the learned Sessions Judges are citing the following reasons:

- i) Non-production of witnesses;
- ii) Several witnesses are being examined, though repetitive.
- iii) Though schedules are fixed, the main witnesses are not being produced or the witnesses, though present, are not completing their chief examination to proceed further.

7. Taking into consideration the said situation resulting in delay in the process of trial, this Court deems it appropriate to pass directions to the Police/Investigating agencies for speedy trial.

8. In the NDPS cases, the accused in most of the cases are in jail, they have a right to speedy trial. Preference has to be given to the Under Trial Prisoners to conclude trial, since personal liberty is involved. The Hon'ble Supreme Court in several cases including **Hussainara Khatoon v. Home Secretary, State of Bihar, Patna**[(1980) 1 Supreme Court Cases 98] and in subsequent judgments, has directed to conclude trials of all Under Trial Prisoners.

9. As seen from the trials that are being conducted in several cases, the prosecution is adopting the process of examining all the witnesses, though unnecessary. Quality of evidence is required and not the quantity. It is not necessary that every circumstance or fact spoken by a witness has to be corroborated by another witness or witnesses. Examining multiple witnesses with regard to the very same aspect or circumstance would only lead to contradictions amongst the witnesses, for which reason, prosecution would suffer. It is not the number of witnesses that have been examined, which would fall for consideration of the Court, it is the evidence of a person, who is a direct witness to an aspect to be spoken.

10. As seen from the trails that are being conducted, prosecution is not adopting the procedure under Section 296 of Cr.P.C by filing an affidavit of witnesses whose evidence is of formal character. The Hon'ble Supreme Court in the cases of: i) **State of Punjab v. Naib Din** [(2001) 8 Supreme Court Cases 578]; ii) **Shankaria v. State of Rajasthan** [

(1978) 4 Supreme Court Cases 453]; iii) **Rajesh Kumar and another v. State Government of NCT of Delhi** [(2008) 4 SCC 493] held that evidence of a formal character can be brought on record by filing an affidavit. It further held that though such statement given on affidavit is not put to the witnesses under Section 313 of Cr.P.C examination, it is not fatal to the prosecution case.

11. Section 293 of Code of Criminal Procedure reads as follows:

“293. Reports of certain Government scientific experts.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

- a) any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b) the Chief Inspector of- Explosives;
- (c) the Director of the Finger Print Bureau;
- (d) the Director, Haffkeine Institute, Bombay;
- (e) the Director ¹, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) the Serologist to the Government.”

12. Section 296 of Code of Criminal Procedure reads as follows:

“296. Evidence of formal character on affidavit.

(1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.”

13. In NDPS cases, it is found that group or team of police officials intercept or stop a vehicle or raid a premises and find contraband. In such cases, the head of the team including all the members of the team are being examined, which is totally unnecessary. In such cases, the following procedure can be adopted to minimize the time and expedite the process of trial.

- a) The police shall preferably at the time of filing charge sheet also file a separate memo along with the charge sheet the witnesses whom they intend to examine.
- b) The said process of filtering the witnesses who are necessary to be examined can be mentioned in the said memo.
- c) It would not be necessary in such cases to issue summons to all the witnesses but only two witnesses filed by way of separate memo and give-up the other witnesses at the time of trial.
- d) In the event of the prosecution not being able to secure the witnesses for any reason or on account of hostility, can file an additional memo requesting the concerned Court to examine the other witnesses.

- e) The prosecution shall examine only the relevant witnesses, by examining head of the team, who would be responsible person and also the direct witness to the search and seizure of contraband.
- f) Regarding the other members of the team and the independent witnesses, the prosecution can file one or two affidavits under Section 296 of Cr.P.C stating that they were part of the team and/or they have sent the samples drawn at the scene to the FSL, after depositing in the court. Further, independent witnesses can also file affidavits supporting the main offence.
- g) In the event of defence/accused intending to cross-examine any of the witnesses who filed affidavit under Section 296 of Cr.P.C, can be called for the purpose of cross-examination.
- h) When the Investigating Officer marks the opinion/report of a Scientific Officer, in the event of the defence/accused asking the Court to summon them for cross-examination, the same shall be allowed in accordance with Sections 293 and 296 of Cr.P.C.

14. Adopting the aforesaid procedure, the prosecution can conclude trials expeditiously, within a period of 3 months from the date of this order.

15. The Director General of Police, Telangana State is directed to instruct all the concerned Officers/Agencies to follow the procedure strictly, by issuing necessary circulars/memos/notifications.

16. Accordingly, all the Criminal Petitions are disposed of and the Registry is directed to intimate the concerned Court, immediately, regarding the directions for completion of trial.

Miscellaneous applications, pending if any, shall stand closed.

Date: 17.11.2022
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K.SURENDER, J

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NOS.9632, 9717, 9716 & 9739 OF 2022
DATE: .11.2022

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