

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.11412 of 2022

ORDER:

1. Heard Sri K.Venumadhav, learned counsel for the petitioner as well as the learned Additional Public Prosecutor who is representing the Respondent-State.

2. This Criminal Petition, under Section 438 Cr.P.C., is filed seeking for pre-arrest bail in favour of the petitioner, who is arrayed as Accused in C.O.R.No.142 of 2022 of Prohibition and Excise Station, Kollapur.

3. Making his submission, learned counsel for the petitioner contends that the petitioner is a license holder and as per the version of the prosecution, he was involved in selling of toddy. Learned counsel states that the case of the prosecution is that the petitioner was selling toddy and the Excise Officials conducted search and took samples of toddy and subjected for preliminary analysis. But, they could not find the same adulterated. However, they have sent the samples to the laboratory for analysis and later, report was received that the samples tested positive for Alprazolam and hence, the Sections of law were altered and

thereby, it is alleged that the petitioner had committed an offence punishable under Section 8(c) r/w Section 22 of the Narcotic Drugs and Psychotropic Substances Act. Learned counsel states that as per the report of the analyst, the percentage of Alprazolam found in the samples is not noted. Learned counsel submits that the punishment that can be imposed is only upto one year and indeed, the petitioner is innocent.

4. On the other hand, the submission of the learned Additional Public prosecutor is that the toddy was found to be adulterated with Alprazolam and hence, the petitioner was booked for the offence punishable under Section 8(c) r/w Section 22 of the Narcotic Drugs and Psychotropic Substances Act. The report of the analyst reveals justification in the submission of the learned counsel for the petitioner that the percentage of Alprazolam present in the samples is not indicated. As per the submission of the learned Additional Public Prosecutor, material part of investigation is completed. Also, it is alleged that the procedure required to be followed while drawing the samples is not complied with.

5. Having considered all these aspects, this Court is of the view that the request of the petitioner can be honoured, however, conditionally.

6. In the result, the Criminal Petition is allowed with the following conditions:

- (i) The petitioner/Accused is directed to surrender before the concerned Court within ten (10) days. On such surrender, he shall be enlarged on bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for like-sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.
- (ii) The petitioner/Accused shall report before the Station House Officer, Prohibition and Excise Station, Kollapur, on every Monday between 10.30 a.m. and 12:00 p.m. till filing of final report.

- (iii) The petitioner/Accused should not involve in any unlawful activity.
- (iv) The petitioner/Accused should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.
- (viii) In case the petitioner/Accused holds a passport, he shall surrender the same.
- (ix) The petitioner/Accused should ensure his presence whenever required by the Court or Police.
- (x) The petitioner/Accused shall not leave India without previous permission of the Court concerned.

(xi) The petitioner/Accused shall file an affidavit before the Court concerned disclosing the following particulars:-

- (1) Contact number
- (2) Mail address
- (3) Residential particulars.

In case, there is any change of the aforementioned details, the petitioner shall intimate the Court concerned by giving a fresh affidavit duly mentioning the change. He shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the pre-arrest bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date:29.12.2022

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HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.11412 of 2022

Date:29.12.2022

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CIVIL REVISION PETITION No.3578 of 2018

27.12.2021

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