

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.446 of 2023

ORDER:

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

2. This Criminal Petition is filed under Section 439 Cr.P.C. seeking the Court to enlarge the petitioner, who is arrayed as Accused No.4 in S.C.No.1313 of 2022 that is pending on the file of the Court of XXXIII Additional Metropolitan Magistrate, Malkajgiri, on bail.

3. The case facts as could be perceived through the contents of the charge sheet are that Accused No.1 was involved in the business of transporting Ganja by collecting the same from Andhra Pradesh and Orissa borders. With the help of Accused Nos.2 & 3, he was supplying the said contraband to the customers at Zahirabad. In that course, on 24.04.2022, Accused No.1 asked Accused No.2 to arrange a hired car to transport the contraband to Zahirabad. As per the instructions of Accused No.1, Accused No.2 approached the petitioner herein and offered huge amount for hiring his vehicle to transport the

contraband to Zahirabad. The petitioner agreed to do so. While the petitioner was transporting 19 packets of Ganja, police apprehended him and seized the contraband.

4. Making his submission, learned counsel for the petitioner contends that the petitioner is a poor person who was eking out his livelihood by hiring his car and he was not aware about the nature of the material that was present in the alleged packets and only because he was offered huge sum as hire, he accepted for the proposal and that does not mean that he had committed offence falling within the ambit of the Narcotic Drugs and Psychotropic Substances Act. Learned counsel also submits that the petitioner is in judicial custody since 25.04.2022 and the entire investigation is completed and charge sheet is also laid. Learned counsel further submits that the earlier applications filed by the petitioner for grant of the same relief were dismissed on the ground of pendency of investigation.

5. The submission of the learned Additional Public Prosecutor per contra is that having knowledge about the

nature of the material he was asked to transport, the petitioner agreed to do the same, therefore, he is liable to be convicted for the offence that would be charged under the provisions of the Narcotic Drugs and Psychotropic Substances Act.

6. No criminal antecedents of the petitioner are projected by the learned Additional Public Prosecutor. Even it is not the case of the prosecution that the petitioner had at any time involved in any other offence or similar offence. Further, whether the petitioner had knowledge about the material that he was asked to transport is a fact that has to be decided by the trial Court after due trial. As of now, this Court does not find any *prima facie* material to hold that the petitioner is having knowledge about the material that he was asked to transport and he agreed to do the same.

7. Having found no *prima facie* case as of now against the petitioner and as no other criminal antecedents are projected and further as there is no likelihood of the petitioner committing further offence is shown by the

learned Additional Public Prosecutor, this Court is of the view that the request of the petitioner can be honoured, however, conditionally.

8. Resultantly, the Criminal Petition is allowed with the following conditions:-

(i) The petitioner/Accused No.4 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 No.4 is directed not to leave the jurisdictional limits of the trial Court till completion of the proceedings in the Sessions Case in question. In case the petitioner/Accused No.4 at any time is under requirement to leave the jurisdictional limits of the trial Court, he can do so on obtaining

required permission to that effect from the said trial Court.

- (iii) The petitioner/Accused No.4 should not involve in any unlawful activity.
- (iv) The petitioner/Accused No.4 should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused No.4 should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused No.4 should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused No.4 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 No.4 holds a passport, he shall surrender the same if the same is not seized till now.
- (ix) The petitioner/Accused No.4 should ensure his presence whenever required by the Court or Police.

(x) The petitioner/Accused No.4 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 in the aforementioned details, the petitioner shall intimate the Court concerned by giving a fresh affidavit duly mentioning the change.

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

Dr. JUSTICE CHILLAKUR SUMALATHA

Date: 03.02.2023

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