

IN THE HIGH COURT FOR THE STATE OF TELANGANA

Criminal Petition No.563 of 2023

Between:

Kurva Ramesh,
S/o Bheemaiah

... Petitioner

And

The State of Telangana,
reptd by its Public
Prosecutor, High Court of Telangana,
Hyderabad.

...Respondent

JUDGMENT PRONOUNCED ON 03.02.2023

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether her Lordship wishes to
see the fair copy of the Judgment? : Yes/No

Dr. JUSTICE CHILLAKUR SUMALATHA

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> Head Note:

! Counsel for the Petitioner: Mr. M.Amarnath

^ Counsel for Respondent: Sri T.V.Ramana Rao

Additional Public Prosecutor

? Cases Referred:

NIL

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA***CRIMINAL PETITION No.563 of 2023******ORDER:***

Seeking the Court to enlarge the petitioner, who is arrayed as accused No.1 in Crime No.735 of 2022 of Shadnagar Police Station, Cyberabad, on bail, the present Criminal Petition is filed under Section 439 Cr.P.C.

2. Heard Sri M.Amarnath, learned counsel for the petitioner, as well as Sri T.V.Ramana Rao, learned Additional Public Prosecutor who is representing the respondent-State.

3. The matrix of the case, as could be perceived through the contents of the First Information Report, is that the Station House Officer, Shadnagar Police Station, who received credible information that one person is coming from Jadcherla side by a private vehicle carrying huge quantity of ganja and is proceeding towards Hyderabad through NH.44, made a GD entry to that effect and proceeded to Raikal Toll gate and apprehended the petitioner. In the presence of the mediators, Police seized 110 kgs of ganja which was present in four plastic bags from the Tata Hexa vehicle under a cover of panchanama. The seized material and the petitioner were

produced before the Inspector of Police, Shadnagar Police Station immediately.

4. Making his submission, learned counsel for the petitioner contends that as per the procedure prescribed, the alleged seized contraband ought to have been produced before the Magistrate concerned immediately, but there is no material on record to show that such a thing happened. Learned counsel submits that he filed a copy application on 29.12.2022 before the Court of Additional Judicial Magistrate of First Class, Shadnagar, for getting a certified copy of Inventory, but the same was returned with an endorsement that record is not available. Learned counsel further submits that a day earlier i.e., on 28.12.2022, he filed a copy application before the Court of Metropolitan Sessions Judge, Ranga Reddy District for getting certified copy of the Inventory, but it was returned with an endorsement that the record would be available at the lower Court. Indeed, no such record was present at any of the Courts. Learned counsel thereby states that as the procedure prescribed is not followed, the petitioner is entitled for bail.

5. Opposing the submissions thus made, learned Additional Public Prosecutor contends that the procedure prescribed under the Narcotic Drugs and Psychotropic Substances, Act, 1985 (hereinafter referred to as “the NDPS Act”, for brevity) was well followed by the investigating agency. Learned Additional Public Prosecutor submits that on seizure of the contraband, the same was produced before the Magistrate concerned along with a requisition to draw samples, issue certificate and thereafter to send the samples drawn to the Forensic Science Laboratory for analysis and accordingly, the samples were drawn and they were sent to the Forensic Science Laboratory for analysis. Learned Additional Public Prosecutor produced relevant record to that effect.

6. Section 52A of the NDPS Act, which was inserted by Act 2 of 1989, prescribes procedure for disposal of seized narcotic drugs and psychotropic Substances. As per Section 52A(2) of the NDPS Act, where the contraband was seized and was forwarded to the officer in-charge of the nearest Police Station or to the officer empowered under Section 53 thereof, the said officer shall prepare an inventory of the seized material with

details mentioned in the said provision regarding the packing, the country of origin, etc., together with the relevant details as to the identity of the said seized material and thereafter, the said officer has to make an application to any Magistrate. The purpose of making an application to the Magistrate is three fold;

firstly, for certifying the genuineness of the inventory so prepared;

secondly, for taking the photographs of the seized material in the presence of Magistrate and for certifying such photographs to be true; and

lastly, for allowing to draw representative samples of such drugs or substances in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

As per Section 52A(3) of the NDPS Act, where an application to that effect is made, the Magistrate shall, as soon as may be, allow the application.

7. Section 52 of the NDPS Act deals with disposal of persons arrested and articles seized. As per Section 52(3) of the NDPS Act, every person arrested and articles seized falling within the ambit of Section 41(2) or Section 42 or

Section 43 or Section 44 of the NDPS Act shall be forwarded without unnecessary delay to the officer in-charge of the nearest Police Station or the officer empowered under Section 53 thereof.

8. In the case on hand, though the learned Additional Public Prosecutor contends that the necessary procedure required to be followed is indeed followed, this Court finds that it is not so.

9. It is not in dispute that the contraband was seized on 22.11.2022. As per the endorsement found in the requisition filed by the Inspector of Police, Shadnagar Police Station, Cyberabad, the said requisition for collection samples was filed before the Magistrate concerned i.e., Principal Judicial Magistrate of First Class, Shadnagar on 30.11.2022 at about 4.00 pm. Thus, there is delay of more than one week in placing the contraband before the learned Magistrate seeking for drawing the representative samples. That apart, in none of the documents i.e., the inventory, Annexure-I and the Certificate issued by the Court of Principal Judicial Magistrate of First Class, Shadnagar, certifying the genuineness of the inventory, the date of issue is mentioned.

Further, a perusal of Case Diary Part-I goes to show that the Inspector of Police, Shadnagar Police Station, made a GD entry on 24.01.2023 stating that on the said day, he filed inventory before the Court along with the case property for collection of samples and sending the same to the Forensic Science Laboratory for analysis. The learned Magistrate had addressed a letter to the Director, Forensic Science Laboratory, Hyderabad, requesting to compare the samples of the seized property and to give opinion. The letter bears Dis.No.796 of 2022. However, the date on which the said letter was dispatched is not mentioned. It is indicated that the letter was dispatched in the month of November, 2022. However, when the report issued by the Telangana State Forensic Science Laboratories is gone through, this Court finds that the letter in Dis.No.796 of 2022 was dated 15.12.2022. Thus, it is abundantly clear that when the contraband was seized on 22.11.2022 as per the version of the prosecution, it was not produced before the learned Magistrate till 30.11.2022. It is also not known when the learned Magistrate certified the correctness of the inventory

prepared. However, the sample was sent for analysis after 15 days i.e., on 15.12.2022.

10. Admittedly, restriction is imposed upon the Courts for granting bails to the persons accused of committing offences punishable under different provisions of the NDPS Act, more particularly, under the provisions mentioned under Section 37 of the NDPS Act. Thus, Sections 437 to 439 Cr.P.C. cannot be straightaway applied in the rigor of Section 37 of the NDPS Act. As per Section 37 of the NDPS Act, when an application for grant of bail to a person accused of committing offences falling within the ambit of Section 37 of the NDPS Act is filed, the Court is under obligation to issue notice to the Public Prosecutor. Also, the said provision lays down that in case, the Public Prosecutor opposes the application, the Court has to satisfy itself that the person accused cannot be found guilty of committing such an offence and there is no possibility of the said accused committing any offence while on bail. In case, these twin conditions are not satisfied, the person who moves an application for grant of either pre-arrest bail or post-arrest bail cannot be granted such a relief. Thus, the life and liberty

of the individual guaranteed under Article 21 of the Constitution of India would be kept withhold. Such being the rigor of the legislation, there is every requirement for all the instrumentalities of the State and also the judiciary to follow the correct procedure prescribed under the NDPS Act for advancement of justice.

11. However, in the case on hand, this Court finds that when the seizure of the contraband was effected on 22.11.2022, the Inspector of Police, Shadnagar Police Station, leisurely produced the seized contraband before the Magistrate concerned on 30.11.2022 and it is not known when the Court has perused the seized contraband and certified the genuineness of the inventory. That apart, as per the report given by the Forensic Science Laboratory, the representative samples drawn were dispatched on 15.12.2022.

12. Having found these lacunae, it cannot be presumed as of now that the seized material was sent to the Forensic Science Laboratory for analysis. Therefore, this Court is of the view that the petitioner, who is accused of the offence, *prima facie* cannot be held to have committed the offence as

projected by the prosecuting agency. Also, nothing is brought on record to show that the petitioner has any other criminal antecedents or there is possibility of the petitioner committing further offence.

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

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

(i) The petitioner/accused No.1 shall be enlarged on bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty thousand only) with two sureties for the 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) In case, the petitioner/accused No.1 holds a passport, he is directed to surrender the same, if it is not seized by now.

- (iii) The petitioner/accused No.1 should not involve in any unlawful activity.
- (iv) The petitioner/accused No.1 should afford all assistance for proper investigation of the case.
- (v) The petitioner/accused No.1 should not cause the evidence of the offence disappear.
- (vi) The petitioner/accused No.1 should not tamper with the evidence in any manner.
- (vii) The petitioner/accused No.1 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) The petitioner/accused No.1 should ensure his presence whenever required by the Court or Police.
- (ix) The petitioner/accused No.1 shall not leave India without previous permission of the court concerned.
- (x) The petitioner/accused No.1 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. 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 bail granted.

15. While concluding the order, the learned Additional Public Prosecutor stated that the present case is not a solitary case, where the Magistrates are not accepting the contraband produced within time and in the entire State, Police are facing much difficulty for getting the certification regarding the correctness of the inventory prepared, for getting the photographs of the substances taken and for certification of such photographs, for drawing representative samples of the seized substances and certification in that regard. Learned Additional Public Prosecutor contends that when the procedure contemplated

is not followed, the advocates who move applications for grant of bail would highlight the lacunae so as to get the relief claimed and equally, they would get the judgments of acquittal after trial. But, to follow the procedure prescribed, the investigating agency requires the help of all concerned including the Magistrates from whom certification has to be obtained as per Section 52A(2) of the NDPS Act.

16. As per the provision referred to by the learned Additional Public Prosecutor, where any narcotic drugs, psychotropic substances, controlled substances or conveyances were seized and were forwarded to the officer in-charge of the nearest Police Station or to the office empowered under Section 53 of the NDPS Act, such officer is under obligation to prepare an inventory of such seizure with all the details regarding the description, quality, quantity, etc., of the products seized. Thereafter, such officer is under obligation to make an application to any Magistrate for three-fold purpose as indicated in the said provision.

17. Section 52A(3) of the NDPS Act envisages that when an application is made to that effect, the Magistrate shall, as

soon as may be, allow the application. Further, Section 52A(4) of the NDPS Act reads as under:-

“Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

18. Thus, certification made by the Magistrates regarding the inventory prepared, the photographs taken and the list of samples drawn would be treated as primary evidence in respect of such offence. Therefore, the Magistrates are under obligation to entertain the request of the Police officer concerned for certification without unreasonable or undue delay.

19. But, the instance case stands as a classic example where both the police officials and the learned Magistrate acted in a casual manner. This may be due to pressure of work or other allied factors. However, the mandate of law should not be ignored. Therefore, this Court holds that there is every requirement on part of the learned Magistrates to

state in clear terms the date on which the application for the purpose of certification is forwarded by the Police officer concerned, the date on which the task of verifying and issuance of certificates is taken up and the date on which the representative samples were sent to the Forensic Science Laboratory for analysis. Care should be taken for making entry of all the applications forwarded by the Police concerned in this regard in the relevant register maintained by the court. Further, every proceeding including the certifications shall bear the date and seal of the court concerned.

Dr. JUSTICE CHILLAKUR SUMALATHA

03.02.2023

Note:

LR copy to be marked.

B/o

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