

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.614 of 2023

ORDER:

Heard Sri A.Prabhakar Rao, learned counsel for the petitioner, as well as learned Additional Public Prosecutor, who is representing the respondent-State.

2. This is an application filed under Section 438 Cr.P.C., seeking the Court for grant of pre-arrest bail. The petitioner, who is arrayed as Accused No.3 in Crime No.665 of 2018 of Excise Police Station, Dhoolpet, Hyderabad, is before this Court.

3. Making his submission, learned counsel for the petitioner contends that the whole case of the prosecution is based on the confessional statement alleged to have been given by Accused Nos.1 and 2 and indeed Accused Nos. 1 and 2 never confessed about the involvement of the petitioner herein. Learned counsel further submits that no incriminating material is collected by the prosecuting agency against the petitioner till now except the said confessional statement and the said confessional statement cannot be relied upon for convicting the petitioner and, therefore,

absolutely there is no material on record against the petitioner. In this regard, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in ***Tofan Singh vs. The State of Tamil Naidu (Criminal Appeal No.152 of 2013, decided on 29.10.2020)*** wherein at Para No.152 of the Judgment, held as follows:

“Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

4. Contradicting the submission thus made by the learned counsel for the petitioner, learned Additional Public Prosecutor states that the petitioner is involved in three other cases and the investigation is still in progress.

5. Learned Additional Public Prosecutor did not state the material that is collected against the petitioner within these four years i.e. from 2018 to 2023. As rightly stated, no material is on record, at least to state that the vehicle, which was allegedly left by the petitioner at the scene of offence, belongs to the petitioner. As of now, except the alleged confessional statement, there is no material on record to

show the involvement of the petitioner and the alleged confessional statement cannot be taken into consideration without there being any other substantive material. Also as per the case of the prosecution, 1.1 Kg. of Ganja was seized from Accused Nos.1 and 2, which is below the commercial quantity. Having considered all these factors, this Court is of the view that the request of the petitioner can be honoured, however, conditionally.

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

- (i) The petitioner/Accused No.3 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 No.3 shall report before the Station House Officer, Prohibition and Excise Police Station, Dhoolpet, on every Monday between 10.30 a.m. and 12:00 p.m. till filing of final report.
- (iii) The petitioner/Accused No.3 should not involve in any unlawful activity.
- (iv) The petitioner/Accused No.3 should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused No.3 should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused No.3 should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused No.3 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.3 holds a passport, he shall surrender the same.
- (ix) The petitioner/Accused No.3 should ensure his presence whenever required by the Court or Police.

- (x) The petitioner/Accused No.3 shall not leave India without previous permission of the Court concerned.
- (xi) The petitioner/Accused No.3 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.

7. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date:27.01.2023

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