

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.988 of 2023

ORDER:

Heard Sri Md. Nazeeruddin Khan, learned counsel, representing Sri S.Nagesh Reddy, learned counsel on record 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 pre-arrest bail in favour of the petitioner, who is arrayed as accused No.3 in Crime No.374 of 2022 of Osmania University Police Station, Hyderabad.

3. The facts of the case in brief, as could be perceived through the material available on record, are that on 16.8.2022, the Detective Inspector of Police, Osmania University Police Station, Hyderabad, received credible information about possession of drugs by a person and that the said person is trying for disposal of the same to needy customers. On that, he along with his staff proceeded to the spot i.e., Kakatiya nagar, Habsiguda, Hyderabad and apprehended accused No.1 and seized 20 Ecstasy pills, 5 LSD Blots and about 4 gm of MDMA. Accused No.1 gave

statement to the effect that himself and accused No.2 used to secure the drugs from the petitioner and others.

4. Stating that the petitioner has not committed any offence whatsoever, learned counsel for the petitioner contends that no contraband whatsoever was seized from the possession of the petitioner till now. Learned counsel also states that the confessional statement of a co-accused is invalid in the eye of law and therefore, the said confessional statement cannot be used against the petitioner. In this regard, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case between **Tofan Singh Vs. State of Tamilnadu**¹.

5. Learned Additional Public Prosecutor, on the other hand, states that the petitioner is a resident of Goa and in case, anticipatory bail is granted, he will not be available even for trial. However, learned Additional Public Prosecutor failed to submit before this Court any other incriminating material that is collected by the investigating agency till now, apart from the alleged confessional statement of a co-accused. Also, no criminal antecedents in respect of the

¹ (2021) 4 SCC 1

petitioner are shown. Therefore, this Court is of the view that the request of the petitioner can be honoured. However, taking into consideration the apprehension of the learned Additional Public Prosecutor regarding securing of the presence of the petitioner for trial, this Criminal Petition is allowed with the following conditions:-

- (i) The petitioner/accused No.3 is directed to surrender before the Court concerned within ten (10) days. On such surrender, he shall be enlarged on bail on his executing a personal bond for Rs.1,00,000/- (Rupees One lakh 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.3 holds a passport, he is directed to surrender the same.
- (iii) The petitioner/accused No.3 should not involve in any unlawful activity.

- (iv) The petitioner/accused No.3 should afford all assistance for 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) The petitioner/accused No.3 should ensure his presence whenever required by the Court or Police.
- (ix) The petitioner/accused No.3 shall not leave India without previous permission of the court concerned.
- (x) The petitioner/accused No.3 shall report before the Station House Officer, Osmania University Police Station, Hyderabad, on every Sunday and Thursday between 10.30 a.m. and 12.00 p.m. till filing of the final report.

(xi) On filing of final report, the petitioner shall make his attendance before the Court concerned on every first working Monday of the month at 10.30 am till conclusion of the trial proceedings.

(xii) 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.

Dr. JUSTICE CHILLAKUR SUMALATHA

20.02.2023
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