

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.1231 of 2023

ORDER:

Seeking pre-arrest bail, this Criminal Petition is filed under Section 438 Cr.P.C. on behalf of the petitioner who is arrayed as accused No.2 in Crime No.120 of 2022 of Mirchowk Police Station, Hyderabad.

2. Heard Sri G.Chandra Mohan, learned counsel for the petitioner, as well as learned Additional Public Prosecutor who is representing the respondent-State.

3. Making his submission, learned counsel for the petitioner submits that nothing was seized from the possession of the petitioner and indeed, the petitioner is innocent. Learned counsel further submits that accused No.1 was arrested and was enlarged on bail, and even as per the version of the prosecution, approximately 1 kg of ganja was seized from the possession of accused No.1, which falls below the commercial quantity.

4. Learned Additional Public Prosecutor submits that the petitioner supplied ganja to accused No.1 and the same was seized by Police.

5. As per the material available on record, the involvement of the petitioner is based on the confessional statement that is given by accused No.1. Learned Additional Public Prosecutor did not bring any other incriminating material to the notice of this Court except the alleged confessional statement of accused No.1. How far the confessional statement of a co-accused is valid in the eye of law and can be taken into consideration is discussed by the Hon'ble Apex Court in the case between **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence**¹. However, the submission of the learned Additional Public Prosecutor is that investigation is still pending. Considering all these aspects, more particularly, as no contraband was seized from the possession of the petitioner and that, even the contraband seized from the possession of accused No.1, which according to the case of the prosecution is supplied by the petitioner, falls below the commercial quantity, this Court is of the view that the request of the petitioner can be honoured, however conditionally.

¹ (2018) 8 SCC 271

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

- (i) The petitioner/accused No.2 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.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.2 holds a passport, he is directed to surrender the same.
- (iii) The petitioner/accused No.2 should not involve in any unlawful activity.
- (iv) The petitioner/accused No.2 should afford all assistance for proper investigation of the case.
- (v) The petitioner/accused No.2 should not cause the evidence of the offence disappear.

- (vi) The petitioner/accused No.2 should not tamper with the evidence in any manner.
- (vii) The petitioner/accused No.2 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.2 should ensure his presence whenever required by the Court or Police.
- (ix) The petitioner/accused No.2 shall not leave India without previous permission of the court concerned.
- (x) The petitioner/accused No.2 shall report before the Station House Officer, Mirchowk 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) The petitioner/accused No.2 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

15.02.2023
DR