

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2501 of 2023

ORDER:

1. Heard Sri Vinayak, learned counsel who argued on behalf of Sri T.Bala Mohan Reddy, learned counsel on record for the petitioner as well as the learned Additional Public Prosecutor who is representing the Respondent-State.

2. Seeking post-arrest bail, the present Criminal Petition is filed under Section 439 Cr.P.C. on behalf of the petitioner, who is arrayed as Accused No.3 in Crime No.79 of 2022 of Prohibition and Excise Station, Ameerpet, Hyderabad.

3. Stating that the petitioner was neither identified by the Police nor any contraband was seized from his possession, learned counsel for the petitioner submits that in case, as projected by the prosecuting agency, Diazepam, which is a Narcotic Drug, was seized from the possession of the petitioner, such seizure would have been effected in the presence of a Gazetted Officer as provided under Section 50 of the Narcotic Drugs and Psychotropic Substances Act. But, nothing is there on record to show such a procedure is followed which vitiates the proceedings and therefore, the petitioner is entitled for bail.

4. The submission of the learned Additional Public Prosecutor, on the other hand, is that search was conducted in the presence of two independent witnesses and 520grams of Diazepam was seized from the possession of the petitioner. Learned Additional Public Prosecutor did not state the reasons as to why the petitioner was not enlightened with his right of being searched in the presence of a Gazetted Officer or of nearest Magistrate and as to why search was not conducted in their presence. Nowhere in panchanama there is a mention that any attempt in that regard is made. As per Section 50 of the Narcotic Drugs and Psychotropic Substances Act, where an authorized officer is about to search any person under the provisions of Sections 41 to 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. Here is a case where even such an intimation of the right to be searched in the presence of those officials is enlightened to the petitioner herein.

5. Having perceived a clear deviation by the prosecuting agency in this regard regarding the mandatory procedure to

be followed, this Court is of the view that the petitioner is entitled for bail as prayed for.

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

- (i) The petitioner/Accused No.3 shall be enlarged on bail on his executing a personal bond for Rs.75,000/- (Rupees Seventy Five 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 should not involve in any unlawful activity.
- (iii) The petitioner/Accused No.3 should afford all assistance for proper investigation of the case.
- (iv) The petitioner/Accused No.3 should not cause the evidence of the offence disappear.
- (v) The petitioner/Accused No.3 should not tamper with the evidence in any manner.

- (vi) 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.
- (vii) In case the petitioner/Accused No.3 holds a passport, he shall surrender the same if the same is not seized till now.
- (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 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

Date:20.03.2023

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