

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL PETITION No.2736 OF 2023

BETWEEN

Mohammed Iqbal,
S/o.Late Mohammed Yusuf,
Aged about 35 years, Occ:Lorry Transport,
C/o.Mohamed Saleem, Near Noorani Mosque
Naaukhel, Sikandra Rao, Kotwawli, Hatras Disrict,
Uttar Pradesh State.

... Petitioner/Accused No.1

And
The State of Telangana
rep. by Public Prosecutor,
High Court for the State of Telangana
Hyderabad.

... Respondent

Date of Judgment Pronounced: **27.03.2023**

SUBMITTED FOR APPROVAL:

THE HONOURABLE Dr.JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

Dr.JUSTICE CHILLAKUR SUMALATHA

* **THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA**

+ CRIMINAL PETITION No.2736 OF 2023

% Dated 27-03-2023

Mohammed Iqbal,
S/o.Late Mohammed Yusuf,
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... Petitioner/Accused No.1

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High Court for the State of Telangana
Hyderabad.

... Respondent

! Counsel for Petitioner: Sri C.Sharan Reddy

^ Counsel for respondent: Sri T.V.Ramana Rao
Additional Public Prosecutor

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> HEAD NOTE:

? Cases referred

Crl.P.No.11678 of 2022, dated 07.12.2022

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**CRIMINAL PETITION No.2736 of 2023****ORDER:**

1. Heard Sri C.Sharan Reddy, learned counsel for the petitioner as well as the learned Additional Public Prosecutor who is representing the Respondent-State.
2. Seeking the Court to enlarge the petitioner, who is arrayed as Accused No.1 in S.C.No.159 of 2022 that is pending before the Court of Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B.Nagar, on bail, the present Criminal Petition is filed under Section 439 Cr.P.C.
3. Stating that the contraband seized, even as per the version of the prosecution, is not Ganja and thus the petitioner is entitled for bail, learned counsel for the petitioner submits that only the leaves of Cannabis plant were seized from the possession of the accused as per the contents of the charge sheet and possession of Cannabis leaves is not a punishable offence and Cannabis leaves cannot be termed as Ganja and therefore, the case of the prosecution is unsustainable and thus, the petitioner is entitled for bail. Learned counsel also submits that the

petitioner was arrested on 24.01.2022 and since then, he is in judicial custody.

4. The submission of the learned Additional Public Prosecutor, on the other hand, is that Ganja was seized from the possession of the accused and the contents of Panchanama as well as the Report of Forensic Science Laboratory discloses the same and further, huge quantity of 265 Kgs of Ganja was seized and therefore, the petitioner is not entitled for bail.

5. The case of the prosecution as could be perceived through the contents of charge sheet is that the petitioner is accustomed to transport and sell Ganja and he got prepared a secret cabin on the top of Driver seat in a Lorry and he used to keep the procured Ganja in the said secret cabin and used to transport the same and accordingly, while he was transporting the contraband from Visakhapatnam, he was apprehended by Police at Hitech City limits, Hyderabad. The contraband was seized.

6. As per the contents of the charge sheet, Police found 84 packets of Cannabis leaves, each packet containing 2

Kgs and 9 packets of Cannabis leaves, each packet weighing 10 Kgs. Thus, as per the contents of the charge sheet, Cannabis leaves were seized from the alleged Lorry. However, as per the contents of Panchanama, Ganja was seized. Coming to the report of the Forensic Science Laboratory, Hyderabad, the sample sent is Green dry leaves, flowering tops and seeds. The description of the material seized is not present in the Panchanama. As per the contents of the charge sheet, Police seized only Cannabis leaves. The charge sheet does not contain mention that the seized material i.e., Cannabis leaves are accompanied by flowering tops or fruiting tops.

7. Section 2(iii)(b) of the Narcotic Drugs and Psychotropic Substances Act says what Ganja is. It reads as follows:-

“Section 2(iii)(b):- Cannabis (hemp) means Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated.”

8. Thus, as per the aforementioned definition, it is clear that the Ganja means flowering tops or fruiting tops of a Cannabis plant. Ganja excludes seeds and leaves when they were not accompanied by either flowering tops or fruiting tops. Therefore, it is clear that the leaves of a Cannabis plant alone cannot be termed to be Ganja. In this regard, learned counsel for the petitioner relied upon the decision of the High Court of Karnataka in Criminal Petition No.11678 of 2022, dated 07.12.2022, wherein dealing with a petition which is filed for quash of proceedings, the learned Judge referring to Section 2(iii)(b), at Para 8 of the order, held as follows:-

“If we read the definition, ganja which excludes the seeds and leaves, contains flowering or fruiting tops of cannabis plant. In the complaint especially seizure panchanama, which reveals that the bag in possession of the petitioner looked like a leaf, but it contained the flower, fruiting top, leaves and seeds. Considering the same, it not only contains the seeds and leaves, but also accompanying the flowering and fruiting tops. Therefore, the material seized is containing flowering and fruiting tops accompanying the seeds and leaves which amounts to Ganja i.e., the leave and seed

accompanied with flowering or fruiting tops of the cannabis plant. It falls under ganja. The conclusion is only the leaves and seeds not accompanied, then it cannot be considered as ganja. In order to exclude the definition of ganja, the seeds and leaves shall not accompany the tops and fruits.”

9. In the case on hand, charge sheet does not contain a mention that the leaves are accompanied by either flowering tops or fruiting tops. That apart, it is not known as to why in the charge sheet the seized item is shown as Cannabis leaves, when as per the contents of Panchanama Ganja was seized. Also, as earlier discussed, the report of the Forensic Science Laboratory, Hyderabad, goes to show that the sample sent contains leaves, flowering tops and seeds.

10. Having perceived a clear discrepancy with regard to the material seized by the Police, this Court entertains doubt with regard to the actual material that was seized from the possession of the accused in this case.

11. Therefore, this Court considers desirable to honour the request of the petitioner, however, conditionally.

12. Resultantly, the 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 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.1 should not involve in any unlawful activity.
- (iii) The petitioner/Accused No.1 should not cause the evidence of the offence disappear.
- (iv) The petitioner/Accused No.1 should not tamper with the evidence in any manner.

- (v) 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.
- (vi) In case the petitioner/Accused No.1 holds a passport, he shall surrender the same if the same is not seized till now.
- (vii) The petitioner/Accused No.1 should ensure his presence whenever required by the Court or Police.
- (viii) The petitioner/Accused No.1 shall not leave India without previous permission of the Court concerned.
- (ix) 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.

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:27.03.2023

Note:LR copy to be marked.

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HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2736 of 2023

Date:27.03.2023

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