

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2994 of 2023

ORDER:

1. Heard Sri S.Srikanth, 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.2 in N.D.P.S.S.C.No.14 of 2023 which is pending before the Court of I Additional Metropolitan Sessions Judge, Medchal- Malkajgiri District, on bail, the present Criminal Petition is filed under Section 439 Cr.P.C.
3. As per the version of the prosecution, the petitioner was found transporting 102 Kgs of Ganja through an Auto.
4. Making his submission, learned counsel for the petitioner states that the petitioner was arrested on 13.03.2022 and he is in judicial custody since 385 days. Learned counsel further submits that the other accused, i.e., Accused Nos.1, 3 to 5, were not arrested by Police till now and the petitioner is languishing in jail since more

than one year. Learned counsel also states that the investigation was also not conducted in a fair manner. Learned counsel further submits that though final report has to be filed within '180' days, it was not filed and no application was moved before the concerned Court seeking extension of time. Learned counsel further states that when the alleged contraband was seized on 13.03.2022, no steps were taken for producing the same before the concerned Court immediately. Learned counsel states that as per the version of the prosecution, the said contraband was produced before the concerned Court on 27.04.2022. Learned counsel also states that even thereafter, samples were drawn and certification was made on 26.05.2022. Learned counsel submits that there is gross violation of Section 52A of the Narcotic Drugs and Psychotropic Substances Act as such.

5. Record discloses justification in the said submission. When the contraband, as per the version of the prosecution, was seized on 13.03.2022, why it was not

produced before the concerned Court for a period of more than two months, is not stated anywhere.

6. Learned Additional Public Prosecutor also did not give any satisfactory reason for non-production of such contraband within time. Further, learned Additional Public Prosecutor states that very recently charge sheet is laid and the case is posted for production of accused.

7. Having found deviation of the mandatory procedure as laid down under Section 52A of the Narcotic Drugs and Psychotropic Substances Act *prima facie*, however, without giving any finding in that regard as it is for the trial Court to decide the said aspect, this Court is of the view that the request of the petitioner can be considered, however, conditionally.

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

- (i) The petitioner/Accused No.2 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.2 should not involve in any unlawful activity.
- (iii) The petitioner/Accused No.2 should not cause the evidence of the offence disappear.
- (iv) The petitioner/Accused No.2 should not tamper with the evidence in any manner.
- (v) 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.
- (vi) In case the petitioner/Accused No.2 holds a passport, he shall surrender the same if the same is not seized till now.

- (vii) The petitioner/Accused No.2 should ensure his presence whenever required by the Court or Police.
- (viii) The petitioner/Accused No.2 shall not leave India without previous permission of the Court concerned.
- (ix) 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.

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:31.03.2023
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