

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.3546 of 2023

ORDER:

1. Heard Sri Mohammed Zaki, learned counsel 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.2 in S.C.No.159 of 2022, which is pending before the Court of Metropolitan Sessions Judge, Cyberabad.

3. Stating that there is clear discrepancy with regard to the contraband seized and entertaining doubt with regard to the actual material that was seized, this Court, through orders in Criminal Petition No.2736 of 2023, dated 27.03.2023, granted bail in favour of Accused No.1 and applying the same analogy, the petitioner may be enlarged on bail, learned counsel for the petitioner sought bail.

4. Learned Additional Public Prosecutor seeks the Court to dispose of the petition on merits.

5. A perusal of the order that is rendered by this Court in Criminal Petition No.2736 of 2023 reveals justification in the submission of the learned counsel for the petitioner.

6. Dealing with the factual matrix of the case, analyzing the definition of Ganja as given under the Narcotic Drugs and Psychotropic Substances Act, this Court at Paras 7 to 10 of the order held as follows:-

“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.”

7. Having regard to the view thus taken, this Court is of the view that the petitioner is entitled for bail as prayed for.

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:18.04.2023

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