

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.3760 of 2023

ORDER:

Heard Sri Venkata Mohana Rao Pathakota, learned counsel for the petitioner, as well as learned Additional Public Prosecutor who is representing the respondent-State.

2. Seeking pre-arrest bail, the present Criminal Petition is filed under Section 438 Cr.P.C. on behalf of the petitioner, who is arrayed as accused No.5 in Crime No.3 of 2023 of Mahankali Police Station, Hyderabad.

3. The matrix of the case, as could be perceived through the contents of Part-I Case Diary and the complaint, is that Police, on receiving credible information, proceeded to Chenoy Trade Center, Parklane Cross Roads, Secunderabad, and found one person coming on a bike and handing over some sachets to accused No.3. On that, police tried to apprehend those two persons, but the person present on the bike escaped and accused No.3 was caught hold. On enquiry, he disclosed his identity particulars and revealed that the said sachets contain MDMA drug. On that, a gazetted officer was secured, search was conducted and 12 grams of MDMA

was seized. Accused No.3 disclosed the names of the drug peddlers.

4. Contending that the petitioner is innocent, learned counsel for the petitioner states that search and seizure are not in accordance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Learned counsel states that search was not conducted in the presence of a gazetted officer.

5. However, when the contents of the complaint are gone through, it is clear that immediately on enquiry about the contents of the sachets, Police procured a gazetted officer and thereafter, conducted search. Therefore, the said contention needs no consideration.

6. Learned counsel for the petitioner also states that the petitioner has not committed any offence whatsoever and nothing was seized from his possession.

7. The submission of the learned Additional Public Prosecutor is that basing on the confessional statement of accused No.3, the petitioner is arrayed as accused. Learned Additional Public Prosecutor did not state that any other incriminating material was collected regarding the

participation of the petitioner in the said crime or that the petitioner is a drug peddler, apart from the alleged confessional statement of accused No.3. Learned Additional Public Prosecutor also states that there are no criminal antecedents against the petitioner.

8. Having considered these facts, more particularly, absence of any other incriminating material against the petitioner apart from the alleged confessional statement of accused No.3 and as no recovery was made from the possession of the petitioner, this Court is of the view that the request of the petitioner can be honoured, however conditionally.

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

- (i) The petitioner/accused 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 holds a passport, he is directed to surrender the same.

(iii) The petitioner/accused should not involve in any unlawful activity.

(iv) The petitioner/accused should afford all assistance for proper investigation of the case.

(v) The petitioner/accused should not cause the evidence of the offence disappear.

(vi) The petitioner/accused should not tamper with the evidence in any manner.

(vii) The petitioner/accused 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 should ensure his presence whenever required by the Court or Police.

(ix) The petitioner/accused shall not leave India without previous permission of the court concerned.

(x) The petitioner/accused shall report before the Station House Officer, Mahankali 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 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

24.4.2023
dr