

THE HON'BLE SRI JUSTICE M.LAXMAN

CRIMINAL PETITION Nos.4727 and 4729 of 2023

COMMON ORDER:

1. These petitions are filed under Sections 437 and 439 of Criminal Procedure Code, 1973 (Cr.P.C) seeking to grant regular bail. The petitioners are accused Nos.1 and 2 in Crime No.374 of 2023 of S.R Nagar Police Station, Hyderabad District. The offence alleged against the petitioners is under Section 8(c) read with 20 (b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 27 and 29 of NDPS Act.

2. The case of the prosecution is that accused Nos.1 and 2 are resident of East Godhavari and allegedly they took admission in Hyderabad for their education. It is further alleged that they purchased 1,500 grams of ganja in their area and indulged in selling the same to various customers. Out of 1,500 grams of ganja, they already sold 300 grams and when they tried to sell remaining 1,200 grams of ganja, a search was conducted by the police and on search, 800 grams of ganja was recovered from accused No.1 and 400 grams of ganja was recovered from accused No.2.

3. The contention of the learned counsel for the petitioners is that there is no evidence to show that the petitioner/accused Nos.1 and 2 have purchased 1,500 grams of ganja except their self confession. It is also his contention that the seized quantity is small quantity and they were charged for intermediary quantity based on their confession, which is *prima facie* unsustainable. Therefore, he seeks enlargement of the petitioners on bail.

4. Learned Additional Public Prosecutor appearing for the respondent – State contended that accused No.1 has already indulged in similar kind of offence and he was arrested and enlarged on bail. However, he continued to indulge in the same activity. He further contended that as per self-confession of accused Nos.1 and 2 that they have purchased 1,500 grams of ganja. Investigation in this regard is going on. At this stage, it cannot be said that no proof is established. It is also his contention that if accused Nos.1 and 2 are released on bail, they will again indulge in sale of ganja to the needy people in Hyderabad.

5. Heard the learned counsel on either side and perused the material placed on record.

6. As rightly contended by the learned counsel for the petitioners/accused Nos.1 and 2, though there is allegation of purchase of 1,500 grams of ganja, as of now, no evidence is collected except self confession of accused Nos.1 and 2. But, the fact is that when the search was conducted, 800 grams of ganja was recovered from accused No.1 and 400 grams of ganja was collected from accused No.2. The seized quantity of ganja comes under small quantity and maximum punishment prescribed is one year. The NDPS Act is silent with regard to whether all the offences under the Act is non-bailable or not. A reading of Section 37 of NDPS Act, it clearly demonstrates that though heading of the Section show all offences are non-bailable and cognizable, internal part of section refers cognizable and there is no reference of nature of bailable or non bailable offence.

7. Giving the beneficial interpretation, this Court feels that the small quantity is bailable offence. The fact is that the petitioners are indulged in sale though they claims to be student of particular institution. Accused No.1 is already indulged previously if they are allowed to stay in Hyderabad, there is likelihood that they will re-indulge in similar kind of offences and spoil the life of other students. In view of the above, this Court is inclined to grant bail

to the petitioners/accused Nos.1 and 2 on imposing certain conditions.

8. Accordingly, these Criminal Petitions are allowed and the petitioners/accused Nos.1 and 2 shall be released on bail on the following terms and conditions:

(i) The petitioners/accused Nos.1 and 2 shall be released on bail on their executing a personal bond for Rs.25,000/- (Rupees twenty five thousand only) each with two sureties for a like sum each to the satisfaction of learned III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

(ii) The petitioners/accused Nos.1 and 2 shall not directly or indirectly influence or make any witnesses or complainant.

(iii) The petitioners/accused Nos.1 and 2 shall not indulge in similar type of offences till conclusion of trial and if it is found that the petitioners are involved in similar type of offences in future, the bail granted to them shall automatically stands cancelled and they shall be taken into custody forthwith.

(iv) The petitioners/accused Nos.1 and 2 shall give undertaking before the concerned Court that they shall not enter into the surroundings of Hyderabad, Cyberabad and Rachakonda Commissionerate without permission of the Court below till investigation and trial are completed.

(v) Further, whenever there is need of the petitioners/accused Nos.1 and 2 for attending examinations, appropriate permission can be sought before the Court below and when such permission is sought the Court below shall consider the same.

(vi) The petitioners/accused Nos.1 and 2 shall make available with the investigating agency for proper investigation and they shall fully cooperate with the investigation agency. They shall not at in any manner which will be prejudicial to fair and expeditious investigation.

03.07.2023
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