

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11268 OF 2023

ORDER:

1. This Criminal Petition is filed under Sections 167(2) and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioners/Accused Nos.1 to 3 in NCB.F.No.48/1/5/2023/NCB/SUB-ZONE/HYD of Narcotics Control Bureau, Hyderabad Sub-Zone, registered for the offences under Sections 22 (c), 27-A, 28 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NPDS Act').
2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent-State and perused the record.
3. The case of NCB is that on 7/8-05-2023, 3.9 kgs of white colour powder believed to be 'Alprazolam' was seized from the petitioners from the godown. Having seized the said contraband, the petitioners were produced before the concerned Court and remanded to judicial custody on 09.05.2023. Thereafter, the petitioners filed an application under Section 167 Cr.P.C. seeking mandatory bail on 06.11.2023 on the expiry of 180 days. Learned Sessions Judge returned the said petition stating that charge sheet was already filed, petition is not maintainable. Aggrieved by

the said refusal to entertain the application, the petitioners are before this Court seeking regular bail.

4. Learned counsel appearing for the petitioners would submit that the complaint filed without report of FSL cannot be treated as complaint, as such, the petitioners are liable to be released on bail under the statutory provisions of Section 167 Cr.P.C. Further, though the complaint states that 'Alprazolam' was seized, the seized drug was found to be 'Nordazepam'. Further the seizure was made on 07.05.2023, whereas the sampling and certificate of inventory was on 27.10.2023 and thereafter sent to FSL on 30.10.2023. Following ***Ritu Chhabaria vs. Union of India***¹, bail has to be granted.

5. On the other hand, learned Special counsel appearing for NCB would submit that once the complaint is filed, the question of invoking the provision under Section 167(2) of Cr.P.C. does not arise. The judgment of the Hon'ble Supreme Court reported in ***Ritu Chhabaria's*** case has no application since the said judgment was stayed by the larger Bench of the Hon'ble Supreme Court in ***Directorate of Enforcement vs. Manpreet Singh Talwar in Spl. Leave to Appeal (Crl) No.5724 of 2023.***

¹ 2023 SCC online SC 502

6. Further, learned special counsel states that an application was made on 09.05.2023 itself for sampling, however 2nd application was again made on 10.10.2023 for sampling. The Magistrate acted upon the 2nd application and samples were collected and sent to FSL. Since the Magistrate has committed an error, petitioner cannot be granted bail.

7. The Hon'ble Supreme Court in ***Union of India v. Mohan Lal and another***², held that delay in sampling and certification of inventory is fatal. Though it is mentioned in the complaint that application was made on 09.05.2023, certified copy of the said application is not filed. It is not mentioned as to why the 2nd application was again made on 10.10.2023 for sampling and certificate of inventory, when an application was already pending. The fate of seized drug and its custody is also stated by the special counsel.

8. For the reason of their being inordinate delay of 5½ months in sampling and further, the storage or custody of drug is not mentioned in the complaint, this Court deems it appropriate to grant the relief of regular bail relying on the observations of the Hon'ble Supreme Court in ***Mohan Lal's case***, subject to following conditions:-

² (2016) 3 SCC 379

i) The petitioners/Accused Nos.1 to 3 shall execute personal bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two sureties, for a like sum each to the satisfaction of the Metropolitan Sessions Judge-Cum-I Additional District & Sessions Judge-Cum-Designated Court for the Trial of Cases under NDPS Act, Medcahl-Malkajgiri District at Malkajgiri.

ii) The petitioners/Accused Nos.1 to 3 after release shall appear before the concerned Court on every date of hearing.

(iii) The petitioners/Accused Nos.1 to 3 shall abide by the other conditions stipulated under Section 437(3) of Cr.P.C.

9. Accordingly, the Criminal Petition is allowed. Miscellaneous applications, if any pending in this criminal petition, shall stand closed.

Date : 21.11.2023
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K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

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Dt.21.11.2023

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