

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11401 OF 2023

ORDER:

1. This Criminal Petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/Accused No.1 in SC.NDPS.No.149 of 2023 on the file of I Additional Metropolitan Sessions Judge, Hyderabad, registered for the offences under Section 8 (c) r/w. 22 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NPDS Act').
2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent-State and perused the record.
3. The petitioner is aggrieved by the order of the learned Sessions Judge in returning the bail application filed under Section 167(2) of Cr.P.C. seeking mandatory bail.
4. The petitioner was arrested on 18.04.2023 for being in possession of 11 gms. of MDMA drug. The petition came to be filed on 16.10.2023 and it was numbered as SR No.10874 of 2023 on the same day. On the next day, the Office raised objection as to how the petition was maintainable since the

charge sheet was filed on 27.09.2023 and returned on 12.10.2023. With the said endorsement, the criminal petition was returned. However, the petition was re-submitted on 18.10.2023 stating that the objections were complied. On 21.10.2023, the Office endorsed that charge sheet was filed on 27.09.2023 and returned on 12.10.2023. However, the charge sheet was re-submitted on 17.10.2023 and numbered as SC.No.149 of 2023 on 20.10.2023.

5. Learned counsel appearing for the petitioner would submit that as on the date of filing an application seeking mandatory bail on 16.10.2023, there was no charge sheet on file before the Sessions Court for which reason, the Sessions Court ought to have granted bail.

6. On the other hand, learned Additional Public Prosecutor would submit that the charge sheet was filed on 27.09.2023 and returned, however, it was resubmitted on 17.10.2023 and numbered as SC. In the said circumstances, the petitioner is not entitled for the relief under Section 167(2) of Cr.P.C.

7. It is admitted that the petitioner filed petition seeking mandatory bail on 181st day which is 16.10.2023. An indefeasible right accrues once the mandatory period expires

which is 180 days in the present case. Though the charge sheet was filed on 27.09.2023, it was returned and as on the date of filing the petition which is 16.10.2023, there was no charge sheet on the file of the learned Sessions Judge. The date of filing of charge sheet cannot be considered as 27.09.2023, since the said charge sheet was returned.

8. The Hon'ble Supreme Court in ***Sanjay Dutt vs. State of Maharashtra***¹, held that accused's statutory bail is indefeasible that cannot be denied under any circumstances.

9. Since as on the date of filing an application, there was no charge sheet on the file of the Sessions Judge, this Court deems it appropriate to direct the release of the petitioner on bail, subject to following conditions:-

- i) The petitioner/Accused No.1 shall execute personal bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) with two sureties, for a like sum each to the satisfaction of the I Additional Metropolitan Sessions Judge, Hyderabad.
- ii) The petitioner/Accused No.1 after release shall appear before the concerned Court on every date of hearing.

¹ (2009) 2 SCC (Cri) 920

(iii) The petitioner/Accused No.1 shall abide by the other conditions stipulated under Section 437(3) of Cr.P.C.

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

K.SURENDER, J

Date : 21.11.2023
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Dt.21.11.2023

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