

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.12142 of 2023

ORDER:

This Criminal Petition is filed seeking to enlarge the petitioner/A3 on bail in NDSC No.240 of 2022 on the file of the Metropolitan Sessions Judge, Medchal, Malkajgiri District, pending trial for the offences under Section 8(c) punishable under Section 22(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard.

3. The case of the prosecution is that on 14.08.2021, the NCB Officer on receipt of information that about transportation of Alprazolam and accordingly reached near Ujwala Grand on Medak-Hyderabad Road, Gandhi Maisamma, Domana Pochampally Dindigal, Malkajgiri by securing two independent witnesses and intercepted one vehicle bearing No.AP 09CU 7710 and found 3.2 kgs of Alprazolam and cash and under the cover of panchanama, recorded the statements and filed complaint against the accused and case in Cr.No.NCB.F.No.48/1/10/2021/NB/Sub-Zone/Hyd for the offence U/Sec. 8(c) punishable under Section 22(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

4. The petitioner has earlier unsuccessfully approached this Court and also Hon'ble Supreme Court seeking bail.

5. Learned counsel appearing for the petitioner would submit that the petitioner another/A2 approached this Court by filing Criminal Petition No.5681 of 2022. On the undertaking given by the Standing Counsel that the trial would be completed within a period of eight weeks, Criminal Petition was disposed off on 21.07.2022 refusing bail to this petitioner and another. Thereafter, A2 approached the Hon'ble Supreme Court. By order dated 28.04.2023 in Special Leave to Appeal (Crl.) No.4482 of 2023, the Hon'ble Supreme Court held that if the trial was not concluded within a reasonable time, the petitioner would be at liberty to renew the application for bail before the trial Court. A2 moved SLP (Criminal) No.13954 of 2023 and by order dated 05.09.2023, the Hon'ble Supreme Court directed to expedite the trial and complete the same as expeditiously as possible preferably within one year from the date of the order.

6. The petitioner and another again approached this Court and filed Crl.P.No.8247 of 2023. When the case was heard, learned counsel appearing for the NCB stated that the next date of hearing was on 21.09.2023 and the NCB would request the Sessions

Court to issue summons to the witness and conclude trial on day to day basis and in all likelihood, examination of all the prosecution witnesses would be completed within four weeks from 21.09.2023. This Court while dismissing the application on 15.09.23 granted liberty to the petitioner to move for regular bail if the trial was not concluded within four weeks as undertaken by the learned Standing Counsel for NCB.

7. Learned counsel appearing for the petitioner would submit that though in September, 2022, the NCB has undertaken to complete the trial within eight weeks, no efforts were made to conclude trial by examining their witnesses. Even before the Hon'ble Supreme Court, the NCB has undertaken to conclude trial expeditiously. On the basis of the said undertaking, bail petitions were dismissed earlier. The petitioner is in jail since two years four months. Even half of the evidence of the cited prosecution witnesses is not completed. In the said circumstances, when the NCB has repeatedly stated before this Court and Hon'ble Supreme Court that the trial would be expedited, however, failed to produce their witnesses, the petitioner may be granted relief of regular bail.

8. On the other hand, learned Standing Counsel appearing for NCB would submit that in the petition filed by A2, the Hon'ble

Supreme Court on 05.09.2023 refused prayer for bail and directed the trial Court to expedite the trial and conclude within one year. For the said reason, the bail has to be dismissed.

9. As seen from the facts of the case, the NCB had given an undertaking before this Court initially on 21.07.2022 that the trial would be completed within eight weeks. Again on 15.09.2023 also, the NCB undertook to complete the examination of witnesses within four weeks. However, the fact remains that the witnesses are not examined by the NCB and it appears that it would take considerable time.

10. It is apparent that though the NCB is taking all steps and striving to conclude trial as undertaken before this Court, however the circumstances appear to be beyond their control to examine their own witnesses though an undertaking was given before this Court. In the present circumstances it is unlikely that the trial would be concluded in the near future. Accused has a right to speedy trial. Inability of the prosecution to produce witnesses before the trial Court cannot be a reason of continued incarceration.

11. In the said circumstances, when the NCB could not keep up to their own undertaking of examining their own witnesses and in

view of the petitioner not having any criminal antecedents other than the present case, further, being in jail since two years and four months, this Court deems it appropriate to grant relief of regular bail to the petitioner on the following terms.

i. the petitioner/A3 is directed to be released on bail on his executing personal bond for Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for a like sum each, to the satisfaction of Metropolitan Sessions Judge-cum-I Additional District Judge-cum-Spl.Judge under NDPS Act, Medchal-Malkajgiri District.

ii. On such release, the petitioner/A3 shall appear before the concerned Court on every date of hearing.

iii. The petitioner/A3 shall abide by the other conditions stipulated in Section 437 (3) of Cr.P.C.

12. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications, if any pending in this criminal petition, shall stand closed.

Date :18.12.2023
kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.12142 of 2023
Dt.18.12.2023

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