

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL PETITION No.11873 OF 2022

BETWEEN

Seetal Singh,
S/o.Mohan Singh,
Aged about 45 years, Occ:Business,
R/o.H.No.13-1-833, Dilawar Gunj, Mangalhat,
Hyderabad -500006.

... Petitioner/Accused No.2

And

The State of Telangana,
through SHO PS Excise Dhoolpet, Hyderabad
represented by its Public Prosecutor,
High Court for the State of Telangana
at Hyderabad.

... Respondent/Complainant

Date of Judgment Pronounced: **24.01.2023**

SUBMITTED FOR APPROVAL:

THE HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

Dr. JUSTICE CHILLAKUR SUMALATHA

*** THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

+ Criminal Petition No.11873 OF 2022

% Dated 24-01-2023

Seetal Singh,
S/o.Mohan Singh,
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at Hyderabad.

... Respondent/Complainant

! Counsel for Petitioner: Sri Umesh Singh

^ Counsel for respondent: Sri T.V.Ramana Rao

Additional Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred

1. 2014 (2) MWN (Cr.) 244 (FB) (Cal.)

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.11873 of 2022

ORDER:

1. Heard the submission of Sri Umesh Singh, learned counsel appearing for the petitioner as well as Sri T.V.Ramana Rao, learned Additional Public Prosecutor who is representing the respondent-State.

2. Seeking pre-arrest bail, the petitioner, who is arrayed as Accused No.2 in COR No.153 of 2022 of Prohibition and Excise Police Station, Dhoolpet, has moved the present application invoking Section 438 Cr.P.C.

3. The allegation that is levelled against the petitioner is that the petitioner had supplied dry Ganja to Accused No.1. As per the version of the prosecution, the said Ganja of 1.1 Kgs was seized from the house of Accused No.1. Making his submission, learned counsel for the petitioner contends that nothing was seized from the possession of the petitioner and indeed, it is not known from where Accused No.1 procured the alleged Ganja and stored the same at his house. Learned counsel also submits that except the alleged confessional statement of Accused No.1,

there is no other material available with the prosecuting agency to connect the petitioner with the crime in question. Learned counsel also states that the petitioner never got involved in any offences, much less the offences falling within the ambit of Narcotic Drugs and Psychotropic Substances Act and therefore, considering all these aspects, anticipatory bail may be granted.

4. On the other hand, the submission of the learned Additional Public Prosecutor is that the Excise officials got information about the presence of Ganja at the house of Accused No.1 and therefore, they conducted search and seized dry Ganja from the house of Accused No.1 and Accused No.1 gave a statement to the effect that he procured Ganja from Accused No.2.

5. As rightly submitted by the learned counsel for the petitioner, except the alleged confessional statement of Accused No.1, there is no material available on record to show the involvement of the petitioner herein in the crime in question. That apart, the learned Additional Public Prosecutor failed to state whether the petitioner carries any criminal antecedents or that he had got involvement in any

other similar offences or in any other offences whatsoever. The established principle of law is that the confessional statement of co-accused is a weak piece of evidence and except carrying corroborative value, it cannot be taken as a substantive piece of evidence for connecting the co-accused with the crime in question.

6. The second aspect and the crucial point that emerges for consideration is

Whether in the cases falling within the ambit of Narcotic Drugs and Psychotropic Substances Act, Section 438 Cr.P.C. can be applied?

7. Admittedly, Section 37 of the Narcotic Drugs and Psychotropic Substances Act mandates that unless the twin conditions laid therein are taken care of, the Courts are not entitled to admit the accused falling within the ambit of the circumstances mentioned in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, for bail. Section 37 of the Narcotic Drugs and Psychotropic Substances Act states that if at all the case falls within the ambit of the said provision, the Court is under obligation to issue notice to the Public Prosecutor and in case the Public

Prosecutor opposes the application, the Court has to verify whether the material produced connects the accused with the crime in question and should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. The Court should also be satisfied that there is no likelihood of the accused to commit any further offences while on bail. However, Section 37 of the Narcotic Drugs and Psychotropic Substances Act does not preclude the accused falling within its ambit from claiming pre-arrest bail.

8. The other relevant provision is Section 36C of the Narcotic Drugs and Psychotropic Substances Act. It deals with the application of Criminal Procedure Code to the proceedings before the Special Court constituted under the Narcotic Drugs and Psychotropic Substances Act.

9. Section 36C of Narcotic Drugs and Psychotropic Substances Act reads as follows:-

36 C. *Application of Code to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a*

Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

10. Thus, by the above provision, it is clear that the provisions of Code of Criminal Procedure apply to the proceedings before the Special Court constituted for trying the offences falling within the ambit of Narcotic Drugs and Psychotropic Substances Act unless the same is otherwise provided by the provisions of Narcotic Drugs and Psychotropic Substances Act. The words “including the provisions as to bails and bonds” mentioned under Section 36C needs a special mention. Therefore, unless there is an express prohibition of applicability of any of the provisions of the Criminal Procedure Code, all the provisions mentioned therein applies to the proceedings that are taken up under the provisions of Narcotic Drugs and Psychotropic Substances Act. No bar is provided under any of the provisions of Narcotic Drugs and Psychotropic Substances Act regarding the applicability of Section 438 Cr.P.C. On the same issue, when a reference was made,

the full Bench of the High Court of Calcutta in the case between **Teru Majhi and anr Vs. State of West Bengal & ors.**¹ referring different provisions of Narcotic Drugs and Psychotropic Substances Act, more particularly Section 36C of the said Act, gave a finding answering the reference that the Special Court constituted under Section 36 of Narcotic Drugs and Psychotropic Substances Act is competent to entertain a pre-arrest bail petition under Section 438 Cr.P.C. Therefore, this Court is of the view that the persons against whom accusation is made under the provisions of Narcotic Drugs and Psychotropic Substances Act are well entitled to move applications for grant of pre-arrest bail under Section 438 Cr.P.C.

11. However, it is made clear that grant of pre-arrest bail is subject to the twin conditions laid under Section 37 of the Narcotic Drugs and Psychotropic Substances Act. Only when the Court comes to a conclusion that the twin conditions laid under Section 37 of the Narcotic Drugs and Psychotropic Substances Act are complied, then only the

¹ 2014 (2) MWN (Cr.) 244 (FB) (Cal.)

accused, who moves an application under Section 438 Cr.P.C. can be granted with the relief of pre-arrest bail.

12. Coming to the merits of the case, as already discussed, except the alleged confessional statement of the co-accused, there is no material on record to show the involvement of the petitioner. Therefore, this Court is of the view that the petitioner is entitled for the relief claimed.

13. In the result, the Criminal Petition is allowed with the following conditions:

(i) The petitioner/Accused No.2 is directed to surrender before the concerned Court 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 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) The petitioner/Accused No.2 shall report before the Station House Officer, Prohibition and Excise

Police Station, Dhoolpet, on every Monday between 10.30 a.m. and 12:00 p.m. till filing of final report.

- (iii) The petitioner/Accused No.2 should not involve in any unlawful activity.
- (iv) The petitioner/Accused No.2 should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused No.2 should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused No.2 should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused No.2 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) In case the petitioner/Accused No.2 holds a passport, he shall surrender the same.
- (ix) The petitioner/Accused No.2 should ensure his presence whenever required by the Court or Police.
- (x) The petitioner/Accused No.2 shall not leave India without previous permission of the Court concerned.

(xi) The petitioner/Accused No.2 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 of 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 pre-arrest bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date:24.01.2023

Note: LR copy to be marked
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HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.11873 of 2022

Date:24.01.2023

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CIVIL REVISION PETITION No.3578 of 2018

27.12.2021

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