

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.2109 OF 2024

ORDER:

This Criminal Petition is filed by the petitioner – Accused No.8 under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.497 of 2023 on the file of the Afzalgunj Police Station, Hyderabad, registered for the offences under Sections 8(c) read with 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’) read with Section 29 of NDPS Act.

2. The case of the prosecution in brief was that on 10.11.2023 the Sub-Inspector of Police of Afzalgunj Police Station, while conducting routine check at Mahatma Gandhi Bus Station, Hyderabad found accused Nos.2 and 3 carrying one black color college bag and when they asked them to stop, they tried to escape from the spot. But the police managed to catch hold them and on checking the bag, noticed five boxes of Nitravet Tablets. The accused Nos.2 and 3 failed to produce any bills/documents for being in possession of the same. The substance Nitrazepam used in Nitravet Tablets would come under Psychotropic substance. As such, he recorded the confession statement of accused Nos.2 and 3 and seized

1464 Nitravet tablets, weighing about 826.400 grams and recorded their confession. Accused No.2 confessed that he brought the contraband to supply to one Raju resident of Mangar Basthi, Habeebnagar and Pallavi W/o.Chakradari, resident of Mangar Basthi, Habeebnagar, Then, the Sub-Inspector of Police by following the procedure, seized the contra band and produced the accused before the court. Basing on the said report, the above case was registered.

3. Heard the learned counsel for the petitioner-Accused No.8 and the learned Additional Public Prosecutor.

4. Learned counsel for the petitioner submitted that the petitioner was innocent of the alleged offences, he was working as a contract employee in the Government, as field worker in GHMC. He was not having any criminal antecedents, he was not involved in any other crimes. Except the confession of accused No.2, there was no material to connect the petitioner with the above case. No contraband was seized from the possession of the petitioner-accused No.8. He was no way concerned with the said allegations. He never indulged in either transportation of the alleged contraband or dealing with the

business of the contraband and prayed to enlarge the petitioner on anticipatory bail.

5. Learned Additional Public Prosecutor opposed for grant of bail to the petitioner stating that the accused Nos. 2 and 3 were apprehended while in possession of the commercial quantity of Nitrovet Tablets which was a psychotropic substance and that they confessed that they brought it to supply to the petitioner herein, as such, prayed to dismiss the bail application of the petitioner.

6. Perused the record.

7. Considering that except the confession of accused Nos.2 and 3, there is no other material to connect the petitioner with the present crime and the confession of accused No.2 also would not disclose that they brought the contraband to supply it to the present petitioner herein, but only stated that he used to supply to the petitioner on the earlier occasions and the confession of accused before the police was inadmissible in evidence as per the Judgment of the Hon'ble Apex Court in **Toofan Singh v. State of Tamilnadu**¹, wherein it was held that:

¹ (2021) 4 SCC 1

“A confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession / voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail.”

8. Accordingly, the Criminal Petition is allowed and the petitioner – accused No.8 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner-Accused No.8 is directed to surrender before the Station House officer, Afzalgunj Police station, Hyderabad, within a period of (02) weeks from the date of this order. On such surrender, he shall release the petitioner on bail on his executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer.
- 2) The petitioner-Accused No.8 shall abide by the conditions stipulated under Section 438(2) of

Cr.P.C and shall co-operate with the Investigating
Officer in investigation of the case.

Miscellaneous applications, pending if any, shall stand closed.

Date:04.03.2024
dgr

Dr. G.RADHA RANI, J