

**THE HON'BLE Dr. JUSTICE G. RADHA RANI**

**CRIMINAL PETITION No.1218 OF 2024**

**ORDER:**

This criminal petition is filed by the petitioner-A2 under Section 438 Cr.P.C. for grant of regular bail in Crime No.173 of 2023 on the file of the Station House Officer, Gudimalkapur Police Station, Hyderabad, registered for the offence under Section 37-A of the Telangana State Excise Act, which was modified to Section 8(c) read with 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The case of the prosecution in brief was that on 2.11.2023 at 19.00 hours, the Sub-Inspector of Police, Gudimalkapur, Hyderabad lodged a report stating that he received credible information at about 18.00 hours on the same day that the petitioner was selling adulterated toddy to the needy customers at Maisamma compound. As such, he appraised the information to his superiors, summoned two mediators, drafted search proceedings and proceeded to the said place along with his staff and mediators and found the petitioner, informed the purpose of his visit to him and served search proceedings under Section 165 Cr.P.C., under acknowledgment and raided the spot and found adulterated toddy, recorded the confession cum seizure panchanama of

the petitioner and seized the adulterated toddy of 5 bottles weighing about 800 ml., each, white paste 250 gms., white colour dry powder 250 gms., crystal powder 500 gms., in the presence of panch witnesses. Basing on the said report, the above crime was registered and the seized toddy was sent to the chemical examiner.

2.1 The chemical examiner issued a report stating that Alprazolam substance was found in items 1, 4 and 5.

3. Heard the learned counsel for the petitioner-A2 and the learned Additional Public Prosecutor.

4. Learned counsel for the petitioner-A2 submitted that the petitioner was arrested on 02.11.2023 and was released after serving a notice under Section 41-A Cr.P.C. The petitioner filed Crl.P. No.11301 of 2023 before this Court to quash the proceedings against him and this Court passed an order dated 17.11.2023 directing the police not to take coercive steps against the petitioner pending investigation. As per the remand case dairy of A1, the police stated that A2 was not complying the instructions mentioned in the notice and for non-compliance of Section 41-A Cr.P.C., the police would arrest the petitioner. As per Section 41-A (4) Cr.P.C., orders have to be passed by a competent court for arrest of the petitioner. This Court passed orders on 17.11.2023

directing the police not to take coercive steps against the petitioner, as such, the respondents could not plead ignorance of the said orders. The alteration of section of law would not make the order of bail infructuous, and relied upon the judgment of the Hon'ble Apex Court in **Manoj Suresh Jadhav and others v. State of Maharashtra**<sup>1</sup>, wherein it was held that subsequent addition of any offence against the accused persons, who were already on bail, re-arrest of accused, ignoring the earlier bail order was not permissible.

5. Perused Section 41-A(4) Cr.P.C. It reads as follows:

**41A. Notice of appearance before police officer.—**

(1) .....

(2) .....

(3) .....

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

6. As per this provision, even if the person, who was on notice under Section 41-A Cr.P.C. failed to comply with the terms of the notice, the police officer can arrest him only subject to the orders passed by a competent court. In the present case, there were orders passed by this Court in Crl.P. No.11301 of 2023 directing the police not to take

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<sup>1</sup> (2019) 17 SCC 362

any coercive steps. Hence, the police cannot arrest the petitioner ignoring the said orders.

7. Considering the judgment of the Hon'ble Apex Court in **Manoj Suresh Jadhav's** case (supra), wherein it was held that:

“It is not permissible for the respondent-State to simply re-arrest the petitioners by ignoring order dated 02.06.2016 passed by the learned Additional Sessions Judge, Pune, which was in force at that time”,

and as the orders passed by this Court are in force and as the petitioner is apprehending his arrest as it was mentioned in the remand report of A1 also that efforts were continued for his arrest, it is considered fit to enlarge the petitioner on anticipatory bail on certain conditions.

8. In the result, the Criminal Petition is allowed and the petitioner-A2 is granted anticipatory bail, subject to the following conditions:

- (i) The petitioner-A2 is directed to surrender before the Station House Officer, Gudimalkapur Police Station, Hyderabad, within a period of fifteen (15) days from today, and on such surrender the Station House officer, Gudimalkapur Police Station, Hyderabad shall release the petitioner on bail on his executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of said Station House Officer.

- (ii) The petitioner-A2 shall abide by the other conditions stipulated in Section 438(2) of Cr.P.C. and shall appear before the Investigating Officer as and when directed by him and shall co-operate with the Investigating Officer in investigation of the case.

Miscellaneous applications, if any, pending, shall stand closed.

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**Dr. G. RADHA RANI, J**

**February 06, 2024**  
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