

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.1258 OF 2024

ORDER:

This criminal petition is filed by the petitioner-A1 under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.542 of 2023 on the file of the Station House Officer, Amberpet 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 21.30 hours, the Sub-Inspector of Police, Amberpet, Hyderabad lodged a report stating that he received credible information at 20.00 hours about sale of adulterated toddy in House No.2-3-606, Patel Nagar, Ahmed Nagar, Amberpet, Hyderabad, by mixing narcotics in the toddy. As such, he visited the said place along with two panch witnesses, found a person selling toddy at the counter. On enquiry, he revealed his details as Katkuri Venkatesh S/o. K. Yadagiri and that he was working in the said shop and the said shop was run by his owner E. Rajnikanth Goud (petitioner herein). When they observed the toddy shop, they found old beer bottles filled with toddy, in plastic trays. 12 numbers of beer

bottles filled with toddy in each plastic tray, total 56 plastic trays and the police collected samples randomly, sealed them and brought to the police station. Basing on the said report, the above case was registered initially under Section 37 E of the TSE Act. Later, after the chemical examiner issued a report stating that Alprazolam substance was found in the seized items, the section of law was altered from Section 37 E of TSE Act to Section 8 (c) read with read with 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

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

4. Learned counsel for the petitioner-A1 submitted that there were no averments made in the FIR alleging that the petitioner was involved in mixing or permitting to mix any intoxicating drug in the toddy. The petitioner had valid licence to run the toddy shop. The police implicated the petitioner in the present case with false allegations. He further submitted that the petitioner filed Crl.P. No.11438 of 2023 before this Court seeking to quash the FIR, and this Court passed order dated 20.11.2023 directing the police not to take coercive steps against the petitioner pending investigation. The petitioner was apprehending that the police would arrest him on the ground that he was not

complying with the instructions mentioned in the notice under Section 41-A Cr.P.C. 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 20.11.2023 directing the police not to take coercive steps against the petitioner. The respondents could not plead ignorance of the said orders and relied upon the judgment of the Hon'ble Apex Court in **Manoj Suresh Jadhav and others v. State of Maharashtra**¹, 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

¹ (2019) 17 SCC 362

by a competent court. In the present case, there are orders passed by this Court in Crl.P. No.11438 of 2023 directing the police not to take 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, 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-A1 is granted anticipatory bail, subject to the following conditions:

- (i) The petitioner-A1 is directed to surrender before the Station House Officer, Amberpet Police Station, Hyderabad, within a period of fifteen (15) days from today, and on such surrender the Station House officer, Amberpet 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-A1 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 investigation of the case.

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

Dr. G. RADHA RANI, J

February 06, 2024
KTL