

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.1265 OF 2024

ORDER:

This criminal petition is filed by the petitioners-Accused Nos.1 and 2 under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.541 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 21.00 hours, the Sub-Inspector of Police, Amberpet, Hyderabad lodged a report stating that while he was in patrolling duty, at about 19.30 hours, he received credible information about sale of adulterated toddy by mixing narcotics in the toddy in House No.2-2-63/1, Kallu Geetha Parishramika Sahakara Sangam, Opp. Kings Palace Hotel, Ramanthapur Road, Amberpet, Hyderabad. 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 Panjala Chandrashekar S/o. Pandu Goud (petitioner No.1-A1), and he was the owner of the said shop. The police observed a

one wooden box with old beer bottles filled with toddy and two wooden boxes, one box with 36 beer bottles filled with toddy and another box with 24 beer bottles filled with toddy. They collected the samples, 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 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 22 (c) of the NDPS Act.

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

4. Learned counsel for the petitioners submitted that the petitioner No.1 was running the toddy shop under the name and style of Kallu Geetha Parishramika Sahakara Sangama and the petitioner No.2 was the licence holder. There were no averments in the FIR that the petitioners were involved in mixing or permitting to mix any intoxicating drug in the toddy. The petitioners never involved in the offences alleged against them and the police implicated the petitioners in the present case with false allegations. The petitioners filed CrL.P. Nos.11441 and 11213 of 2023, respectively, before this Court seeking to quash the FIR, and this Court passed orders dated 20.11.2023 and 17.11.2023 directing the police not to take coercive

steps against the petitioners pending investigation. The petitioners were apprehending that police would arrest them on the ground that they were 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 and 17.11.2023 directing the police not to take coercive steps against the petitioners. 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,

¹ (2019) 17 SCC 362

the police officer can arrest him only subject to the orders passed by a competent court. In the present case, there are orders passed by this Court in Crl.P. Nos.11438 and 11213 of 2023 directing the police not to take any coercive steps. Hence, the police cannot arrest the petitioners 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 petitioners are apprehending their arrest, it is considered fit to enlarge the petitioners on anticipatory bail on certain conditions.

8. In the result, the Criminal Petition is allowed and the petitioners-accused Nos.1 and 2 are granted anticipatory bail, subject to the following conditions:

- (i) The petitioners-accused Nos.1 and 2 are 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 petitioners on bail on executing a personal bond for a sum of

Rs.20,000/- (Rupees twenty thousand only) with two sureties each for a like sum each to the satisfaction of said Station House Officer.

- (ii) The petitioners-accused Nos.1 and 2 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