

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1364 OF 2024

ORDER:

This Criminal Petition is filed under Section 438 of Code of Criminal Procedure, 1973 (for short “Cr.P.C”) seeking anticipatory bail to the petitioner in Crime No.188 of 2023 on the file of Station House Officer, Ramgopalpet Police Station, Secunderabad, registered for the offence punishable under Section 37(A) of Telangana Excise Act (for short ‘TSE Act’) which was altered to Section 8(c) read with 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

2. The case of the prosecution in brief was that on 02.11.2023 at around 16:00 hours, the Sub Inspector of Police, Ramgopalpet Police Station, received credible information that some persons were selling adulterated toddy at Telangana Toddy compound, obtained permission from his superiors, secured panch witnesses and proceeded to the said place along with mediators and found a person sitting in the cash counter. On enquiry, he disclosed his details and stated that he was a sales man in that shop. The police conducted search of the premises and found two persons filling toddy in glass bottles from the drums in a room, and also

found some plastic and glass bottles filled with toddy, sealed bags of citric acid monohydrate loose citric acid and one plastic bag of loose sodium bicarbonate and seized the said material and collected samples and produced the said persons before the SHO along with the report.

3. Basing on the said report, the above crime was registered under Section 37-A of TSE Act. Later, the samples were sent to the chemical examiner and on receiving the report that it was adulterated with alprazolam, altered the section of law to Section 8(c) read with 22(c) of NDPS Act.

4. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent-State.

5. (a) Learned counsel for the petitioner submitted that the petitioner was the license holder of the Toddy Tappers Cooperative Society, Minister Road, Hyderabad. Though, he was not shown as an accused by the police in the above Crime, he was apprehending his arrest since some of the license holders, who were also not shown as an accused were arrested subsequently and relied upon the judgments of the Hon'ble Apex Court in *Shri Gurbaksh Singh Sibbia and others Vs*

State of Punjab¹ and the High Court of Andhra Pradesh in ***K.Dayanand Rao and others Vs.State of A.P.²***

5. (b) He further contended that the respondent/police have conducted the raids in violation of Rules 3 and 27 of Telangana State Excise Rules. Without knowing the quantity of intoxicant, it could not be said that the offence under Section 8(c) read with 22(c) of NDPS Act was committed. When no quantity of intoxicant was mentioned, it would only come under Section 8(c) read with Section 22(a) of NDPS Act, which was punishable only with one year imprisonment.

6. Learned Additional Public Prosecutor opposed grant of anticipatory bail to the petitioner.

7. Perused the record. Considering the submission of the learned counsel for the petitioner and the judgments of the Hon'ble Apex Court and the High Court of Andhra Pradesh, wherein it was made clear that the filing of first information report is not a condition precedent to exercise the power under Section 438 of Cr.P.C., and as the petitioner is apprehending his arrest, as the license holders in other cases were also arrested by the police, it is considered fit that the

¹ 1980 2 SCC 565

² 1992(3) ALT 21

protection under Section 438 of Cr.P.C. can also be extended to petitioner whose name was not shown in the F.I.R. Considering merit in the contention of the learned counsel for the petitioner that without knowing the quantity of intoxicant, it would not come under Section 8(c) read with 22(c) of NDPS Act, but would only attract Section 22(a) of NDPS Act, it is considered fit to grant anticipatory bail to the petitioner.

7. Accordingly, the Criminal Petition is allowed and the petitioner shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner is directed to surrender before the Station House Officer, Ramgopalpet Police Station, Secunderabad, within a period of 15 days from the date of this order. On such surrender, the said Station House Officer 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 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: 22.02.2024
KTL/DSV

Dr. G.RADHA RANI, J