

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1365 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.209 of 2023 on the file of Station House Officer, Khairatabad Police Station, Hyderabad, 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 18:30 hours, the Sub Inspector of Police, Khairatabad Police Station, conducted search at Toddy compound at Prem Nagar, Chintal Basthi, Hyderabad along with his staff and panch witnesses. In the said shop, they found a person sitting in the counter of the said shop. On enquiry, he revealed his name as G. Srinivas Goud, and stated that he was the owner of the said shop and showed the licence to the police, which was in the name of one K. Sugunamma. The police noticed 108 plastic crates, each crate containing 12 bottles and each bottle containing 650 ml of toddy. The police seized the property and out of the same, collected six bottles as samples and

sent them for chemical examination.

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 said shop and President of the Toddy Tappers Cooperative Society, Chintalbasti, Hyderabad. Though, she was not shown as an accused by the police in the above Crime, she was apprehending her 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 Punjab***¹ 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

¹ 1980 2 SCC 565

² 1992(3) ALT 21

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 filing of first information report was not a condition precedent to exercise of power under Section 438 of Cr.P.C., and as the petitioner is apprehending her arrest as the license holders in other cases were also arrested by the police, it is considered fit that the protection under Section 438 of Cr.P.C. can also be extended to the 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 on certain conditions.

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, Khairatabad Police Station, Hyderabad, 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 her 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