

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.1372 OF 2023

ORDER:

This criminal petition is filed by the petitioner-Accused under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.369 of 2023 on the file of the Station House Officer, Malakpet Police Station, Hyderabad, registered for the offence under Section 37-A of the Telangana State Excise Act, which was altered 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 02.11.2023 at about 17:30 hours, the Sub-Inspector of Police, Hyderabad lodged a report stating that while he was at Malakpet Police Station, he received credible information about sale of adulterated toddy by mixing narcotics in the toddy at House No.16-11-16/M/12, East Prashanth Nagar, Moosarambagh. He placed the said information before his Superior Officer, obtained permission, and on securing two mediators, the Sub-Inspector of Police along with his staff, visited the said place and found one person, who was the Manager of the Toddy Compound. The police seized three toddy bottles, each containing one liter, and about 1 kg., of white colour powder from the toddy compound in the presence of the panch witnesses. The seized items were brought to the police station. Basing on the said report, the above case

was registered initially under Section 37-A of the TSE Act. The samples were sent to the Chemical Examiner. The Chemical Examiner issued a report stating that Alprazolam substance was found in the seized items. Then, the section of law was altered from Section 37A of TSE Act to Section 8(c) read with 22 (c) of the NDPS Act.

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

4. Learned counsel for the petitioner submitted that the petitioner was the licence holder of the Toddy Tappers Cooperative Society, Moosarambagh, Hyderabad. The petitioner obtained license to run toddy depot under the management of the Society. He further submitted that there were no averments in the FIR that the petitioner was involved in mixing or permitting to mix any intoxicating drug in the toddy. The petitioner never involved in the offences alleged against him and the police implicated the petitioner in the present case with false allegations. The petitioner filed Crl.P.Nos.11568 of 2023 and 946 of 2024, respectively, before this Court seeking to quash the FIR, and this Court passed orders dated 22.11.2023 and 30.01.2024 directing the police not to take coercive steps against the petitioner pending investigation. The petitioner was apprehending that 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 22.11.2023 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 by a competent court. In the present case, there are orders passed by this Court in Crl.P. Nos.11568 of 2023 and 946 of 2024 directing the police not to take

¹ (2019) 17 SCC 362

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 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 - accused is granted anticipatory bail, subject to the following conditions:

- (i) The petitioner-accused is directed to surrender before the Station House Officer, Malakpet Police Station, Hyderabad, within a period of fifteen (15) days from today, and on such surrender the Station House officer, Malakpet Police Station, Hyderabad shall release the petitioner 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 petitioner-accused 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 15, 2024
DSV/DS