

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1931 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 petitioners-Accused Nos.1 to 3 in Crime No.350 of 2023 on the file of the Station House Officer, Mangalhat Police Station, Hyderabad, registered for the offence punishable under Section 37-A of Telangana Excise Act (for short ‘TSE Act’) which was altered to 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 20:00 hours, the Detective Inspector, Mangalhat, Hyderabad lodged a report stating that he received credible information at 18:10 hours on the same day that one person was selling adulterated toddy in the Toddy Shop at Mangalhat, Hyderabad, by mixing intoxicant viz., alprazolam. As such, he apprised the information to his superiors and obtained permission. He secured the presence of two panchas and visited the said place along with his staff and panchas and found a person selling toddy

to the needy customers. On enquiry, the said person revealed his name as B.Kiran Kumar Goud, and that he was working as Manager in the said shop and admitted his guilt. He further confessed that one K. Naveen Kumar Goud (petitioner No.1-A1) was the owner of the shop and B. Ram Kumar (petitioner No.3-A3) was a worker in the said shop. On the instructions of their owner only, they were mixing alprazolam in the toddy and selling the same to the customers. The police recorded the confession and seizure panchanama and seized the adulterated toddy bottles and other contraband i.e. crystalline substance viz., sugar, citric acid and sodium bicarbonate, etc. They collected samples of adulterated toddy in two bottles and other crystalline substances 100 grams each.

3. Basing on said report, the above crime was registered and the seized material was sent to the chemical examiner. 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-A of TE Act to Section 8(c) read with 22 (c) of the NDPS Act, 1985

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

5. Learned counsel for the petitioners submitted that the petitioner No.1 – A1 was the licence holder of the toddy shop and he obtained licence under the T.S. Co-operative Societies Act. The petitioner Nos.2 and 3 –A2 and A3 were working under him. He further submitted that the petitioners were never involved in the offences alleged against them and they were falsely implicated in the above case. The police had drawn the samples in violation of Rule 27 of Andhra Pradesh Excise Rules. The petitioners filed Crl.P.No.11311 of 2023 before this Court seeking to quash the FIR and this Court passed orders on 17.11.2023 directing the police not to take any coercive steps against the petitioners, pending investigation. The petitioners were apprehending arrest as the case was modified to Section 8(c) read with Section 22 (c) of the NDPS Act. The respondents could not plead ignorance of the orders passed in Crl.P.No.11311 of 2023 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 person, who was already on bail, re-arrest of accused, ignoring the earlier bail order was not permissible.

¹ (2019) 17 SCC 362

5.1 He further submitted that 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 only comes 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 bail to the petitioners and submitted that several criminal cases were pending against the petitioner No.1 – A1.

7. The contention of the learned counsel for the petitioners was that petitioner No.1 – A1 was acquitted in those cases.

8. Perused the record. Considering merit in the submission of the learned counsel for the petitioners that without knowing the quantity of intoxicant, it would not come under Section 8(c) read with 22(c) of NDPS Act, but would attract only the offence under Section 22(a) of NDPS Act, and also considering the judgment of the Hon'ble Apex Court in **Manoj Suresh Jadhav's** case (supra) relied by the learned counsel for the petitioners and as the orders passed by this Court in Crl.P. No.11311 of 2023 are in force and as the petitioners are

apprehending arrest, it is considered fit to enlarge the petitioners on anticipatory bail on certain conditions.

9. Accordingly, the Criminal Petition is allowed and the petitioners -accused Nos.1 to 3 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioners-Accused Nos.1 to 3 are directed to surrender before the Station House Officer, Mangalhat 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 petitioners on bail, on their executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties for a like sum each to the satisfaction of the said Station House Officer.
- 2) The petitioners-Accused Nos.1 to 3 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.

Dr. G.RADHA RANI, J

Date: 21.02.2024
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