

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1918 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 No.1 and to the petitioner Nos.2 and 3/Accused Nos.1 and 2 in Crime No.276 of 2023 on the file of Station House Officer, Shahinayathgunj 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 03.11.2023 at around 12:00 hours, the Sub Inspector of Police Shahinayathgunj Police Station lodged a report stating that on credible information that two (02) persons were selling toddy without valid license at Fish Market, obtained the permission from his superiors, secured the panch witnesses and proceeded to the said place along with the mediators and noticed two persons/Accused Nos.1 and 2 selling toddy by adding alprazolam and that as they admitted to have committed the offence, as such recorded the

confession-cum-seizure panchanama of Accused Nos.1 and 2 and seized 113.50 litres of toddy and collected samples and produced Accused Nos.1 and 2 before the SHO along with the report. Basing on the said report, a 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.

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

4 (a) Learned counsel for the petitioners submitted that the petitioner No.1 was a license holder of the Toddy Tappers Cooperative Society, Pulekona, 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 Punjab***¹ and the High Court of Andhra Pradesh in ***K.Dayanand Rao and others Vs.State of A.P.***²

¹ 1980 2 SCC 565

² 1992(3) ALT 21

4 (b) He further contended that the respondent/police have conducted the rides in violation of Rule 27 of Andhra Pradesh Excise Rules and that police were threatening that the petitioner Nos.2 and 3, who were already granted bail would also be arrested due to the alteration of the section of law from 37(A) of TSE Act to Section 8(c) read with 22(c) of NDPS Act.

4 (c) 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.

4 (d) Learned counsel for the petitioners further submitted that the petitioner Nos.2 and 3 had filed Crl.P.No.11307 of 2023 dated 17.11.2023 wherein a protection was given by this Court not to take any coercive steps against them, but they were now apprehending arrest as the case was modified to Section 8(c) read with 22(c) of NDPS Act.

5. Learned Additional Public Prosecutor submitted that several criminal cases were pending against the petitioner No.1 which are as

follows:

1. Cr.No.632 of 2003 was registered for the offence under Section 302 of IPC of Rajender Nagar Police Station.
2. Cr.No.261 of 2003 was registered for the offences under Sections 448, 323, 364, 382, 504 and 506 read with 34 of IPC of Rajender Nagar Police Station.
3. Cr.No.262 of 2003 was registered for the offences under Sections 448, 323, 364, 382, 504 and 506 read with 34 of IPC of Rajender Nagar Police Station.
4. Cr.No.01 of 2017 was registered for the offences under Sections 341 and 506 read with 34 of IPC of Kulsumpura Police Station.
5. Cr.No.64 of 2016 was registered for the offences under Section 506 read with 34 of IPC of Kulsumpura Police Station.
6. Cr.No.173 of 2023 was registered for the offences under Section 8(c) read with 22(c) of NDPS Act of Gudimalkapur Police Station.
7. Cr.No.276 of 2023 was registered for the offences under Section 8(c) read with 22(c) of NDPS Act of Shahinayathgunj Police Station.

A rowdy sheet was also opened against the petitioner No.1 in the Malkajgiri Police Station and opposed grant of anticipatory bail to the petitioner No.1.

6. The contention of the learned counsel for the petitioners was that in all the above cases, petitioner No.1 was acquitted.

7. Perused the record. Considering the submission of the learned counsel for the petitioners 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 the exercise of the power under Section 438 of Cr.P.C and as the petitioner No.1 is apprehending his 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 petitioner No.1, whose name was not shown in the F.I.R.

8. Considering the submission of the learned counsel for the petitioners that without knowing the quantity of intoxicant, it could not come under Section 8(c) read with 22(c) of NDPS Act, but it would come under Section 22(a) of NDPS Act, it is considered fit to grant anticipatory bail to all the petitioners.

10. Accordingly, the Criminal Petition is allowed and the petitioner No.1 and petitioner Nos. 2 and 3-accused Nos.1 and 2 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner No.1 and the petitioner Nos.2 and 3/Accused Nos.1 and 2 are directed to surrender

before the Station House Officer, Shahinayathgunj Police Station, Hyderabad District, within a period of 15 days from the date of this order. On such surrender, the said Station House Officer shall release the petitioner No.1 and petitioners 2 and 3/accused Nos.1 and 2 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 petitioner No.1 and the petitioner Nos.2 and 3/Accused Nos.1 and 2 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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