

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1930 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 and 2 in Crime No.298 of 2023 on the file of the Station House Officer, Kulsumpura 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 18:30 hours, as per the instructions of the DCP, South West Zone, Hyderabad to conduct search at Karwan Toddy compound, near Ganesh Ghat, Karwan, Hyderabad, the Sub Inspector of Police, Kulsumpura Police Station went to the said toddy shop along with his staff and found a person selling toddy to the customers. On enquiry, he revealed his name as Tirumani Durgesh (petitioner-A2) and admitted selling adulterated toddy. On search, the police found 800 liters of toddy in one

drum and 400 liters of toddy in another drum. They collected samples in two plastic bottles, each with 600 ml of toddy, sealed them and sent for chemical examination.

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 TSE 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. 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 conducted raids in violation of Rules 3 and 27 of Telangana State Excise Rules. He further contended that the petitioners filed Crl.P.No.11312 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 8(c) read with 22 (c) of the NDPS Act. The respondents could not plead ignorance of the orders passed in Crl.P.No.11312 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.

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.

¹ (2019) 17 SCC 362

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 only attract 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.11312 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 and 2 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioners-Accused Nos.1 and 2 are directed to surrender before the Station House Officer, Kulsumpura 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 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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