

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1977 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.208 of 2023 on the file of the 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 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 20:30 hours, the Sub Inspector of Police, Khairatabad Police Station lodged a report stating that on the same day at 17.30 hours, he along with his staff and panch witnesses went to the toddy shop situated at D.No.6-1-585/4, behind Railway Gate, Khairatabad, Hyderabad for conducting search, he received information that adulterated toddy was being sold in the said shop. They found a person, by name, Kambham Chandra Mohan Goud available in the counter and served search proceedings to him. On enquiry, the said person revealed his details. On search, the police found 71 plastic crates of toddy, each crate containing 12 bottles and each bottle containing

650 ml. toddy and also plastic packets. Out of the said property, they collected 6 bottles of toddy as samples, seized 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.2 – A2 was the President of Toddy Tappers Cooperative Society of Khairatabad. The said society was having valid licence to sell the toddy. The petitioner No.1-A1 was the worker in the said toddy shop. He further submitted that the petitioners were never involved in the offences alleged against them, they were falsely implicated in the above case. The police had conducted the raids in violation of Rules 3 and 27 of the Telangana State Excise Rules. He further contended that the petitioners filed Crl.P.No.11405 of 2023 before this Court seeking to quash the FIR and

this Court passed orders 18.11.2023 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.11405 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 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 bail to the petitioners.

¹ (2019) 17 SCC 362

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.11405 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, 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 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.

Date: 22.02.2024
KTL/DSV

Dr. G.RADHA RANI, J