

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.1986 OF 2024

ORDER:

This criminal petition is filed by the petitioner – Accused No.2 under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.215 of 2023 on the file of the Station House Officer, Trimulagherry 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 19:00 hours, the Sub-Inspector of Police, Trimulgherry, Hyderabad lodged a report stating that while he was in the Police Station, he received credible information about the sale of adulterated toddy by mixing narcotics at Sy. No.105, RTC Colony, Trimulgherry, Hyderabad. He placed the said information before his Superior Officer, obtained permission, and on securing two mediators visited the said place along with his staff. While they were searching the toddy shop, a person, by name, Arvind, tried to throw white colour packets out of the compound. On suspicion they searched that

place and found 8 packets of Saccharine (each 1 kg), 11 white paste packets (each 1 kg), a white plastic bag containing around 25 kgs., of white coloured crystals similar to citric acid and white plastic bag containing around 20 kgs., of white colour powder similar to sodium bicarbonate and also found three black colour syntax tanks and one red colour tank filled with toddy. As such, the Sub Inspector of Police recorded the confession cum seizure panchanama of the said person in the presence of panchas, seized the property and collected samples, sealed them and brought to the police station.

3. 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 for analysis and report. 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 37-A of TSE Act to Section 8(c) read with 22 (c) of the NDPS Act.

4. Heard the learned counsel for the petitioner-A2 and the learned Additional Public Prosecutor.

5.1 Learned counsel for the petitioner submitted that the petitioner was the owner of the toddy compound and he obtained

licence to run toddy depot under the management of the Toddy Tappers Co-operative Society, Indiranagar, RTC Colony, Trimulgherry. 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 and the police implicated him with false allegations. The police had drawn the samples in violation of Rules 3 and 27 of the Telangana State Excise Rules. The petitioner filed Crl.P.No.11860 of 2023 before this Court seeking to quash the FIR and this Court passed orders on 04.12.2023 directing the police not to take any coercive steps against the petitioner, pending investigation. The petitioner was 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.11860 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

5.2 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 petitioner.

7. Perused the record. Considering merit in the submission of the learned counsel for the petitioner 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 petitioner and as the orders passed by this Court in Crl.P. No.11860 of 2023 are in force and as the petitioner is apprehending arrest, it is considered fit to enlarge the petitioner on anticipatory bail on certain conditions.

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

- 1) The petitioner-Accused No.2 is directed to surrender before the Station House Officer, Trimulgherry 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 petitioner on bail, on his executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer.
- 2) The petitioner-Accused No.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