

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.2056 OF 2024

ORDER:

This criminal petition is filed by the petitioner – Accused No.1 under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.349 of 2023 on the file of the Station House Officer, Mangalhat Police Station, Hyderabad, registered for the offence under Section 37-A of the Telangana State Excise Act (for short ‘TSE 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 20:20 hours, the Sub-Inspector of Police, Mangalhat, Hyderabad lodged a report stating that on the same day at 18.05 hours while he was in the Police Station, received credible information that a person, by name, A. Venkatesh Goud (petitioner herein) was selling adulterated toddy at Shankar Café Hotel, Mangalhat, Hyderabad by mixing narcotics, and placed the said information before his Superior Officer, obtained permission, and on securing two mediators visited the said place along with his staff. When they reached the said shop, they found two persons selling

toddy and immediately they apprehended the said persons. On enquiry, they revealed their names as B. Pavan Goud and B. Suresh Goud and stated that they were workers in the said shop and admitted that on the instructions of their owner A. Venkatesh Goud, they were mixing some ingredients viz., citric acid, sugar, sodium bicarbonate & alprazolam in the toddy. On search, the police seized the toddy and other contraband, recorded the confession cum seizure panchanama of the said persons in the presence of panchas, seized the property, collected samples, sealed them and brought them 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-A1 and the learned Additional Public Prosecutor.

5.1 Learned counsel for the petitioner submitted that the petitioner was the licence holder of the toddy shop, the petitioner was

never involved in the offences alleged, 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. He further submitted that the petitioner filed Crl.P.No.11471 of 2023 before this Court seeking to quash the FIR and this Court passed orders on 20.11.2023 directing the police not to take any coercive steps against the petitioner, pending investigation. The petitioner was apprehending arrest as the section of law was modified to Section 8(c) read with Section 22 (c) of the NDPS Act and in the remand report of A2 and A3, the petitioner was shown as absconding. The respondents could not plead ignorance of the orders passed in Crl.P.No.11471 of 2023.

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, and prayed for grant of anticipatory bail to the petitioner.

6. Learned Additional Public Prosecutor opposed grant of

anticipatory bail to the petitioner, stating that he was involved in an NDPS offence.

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 as the orders passed by this Court in Crl.P. No.11471 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.1 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner-Accused No.1 is 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 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.1 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: 26.02.2024
vsl/sa

Dr. G.RADHA RANI, J

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