

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.2154 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 in Crime No.388 of 2023 on the file of Chatrinaka 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 prosecution in brief was that on 02.11.2023 at 21:30 hours, the Station House Officer, Chatrinaka Police Station, Hyderabad lodged a report stating that on receiving credible information that adulterated toddy was being sold in the toddy shop at Laldarwaza, Chatrinaka, Hyderabad, he along with his staff and two panch witnesses went to the said shop. On enquiry, the person available in the shop disclosed his name as Manikantesh Goud. The police seized the toddy bottles found there and collected samples in front of panchas.

3. Basing on the said report, the above crime was registered and the seized material was sent to the chemical examiner. The chemical

examiner issued a report stating that the samples were detected to have been adulterated with Alprazolam, a psychotropic substance. Therefore, the section of law was altered from Section 37-A of TSE Act to Section 8(c) read with 22(c) of NDPS Act.

4. Heard learned counsel for the petitioner and learned Additional Public Prosecutor representing the respondent-State.

5. Learned counsel for the petitioner submitted that the petitioner was the license holder of the said Toddy compound. Though the petitioner was not shown as an accused in the above Crime, he was apprehending his arrest, since the police officials were frequently visiting his residence to arrest him. Learned counsel further submitted that the police had conducted raid in violation of Rules 3 and 27 of the Telangana State Excise Rules. Without knowing the quantity of intoxicant, it could not be said that the petitioner committed the offence under Section 8(c) read with 22(c) of NDPS Act. When the quantity of intoxicant was not mentioned, it would only come under Section 8(c) read with 22(a) of NDPS Act and the punishment prescribed for the said offence was only one year imprisonment. In support of his submissions, learned counsel relied upon the judgments of the Hon'ble Apex Court in **Shri Gurbaksh**

***Singh Sibbia and others v. State of Punjab*¹** and the High Court of Andhra Pradesh in ***K.Dayanand Rao and others v. State of Andhra Pradesh*²**.

6. Learned Additional Public Prosecutor opposed grant of anticipatory bail to the petitioner.

7. Perused the record.

8. Considering the submissions of learned counsel for the petitioner and the aforesaid Judgments of the Hon'ble Apex Court and the High Court of Andhra Pradesh, wherein it was made clear that filing of first information report was not a condition precedent for exercise of power under Section 438 of Cr.P.C., and as the petitioner was apprehending his arrest since the police officials were frequently visiting his residence to arrest him, it is considered fit that the protection under Section 438 of Cr.P.C. can be extended to the petitioner, though his name was not shown in the F.I.R. Also considering merit in the contention of the learned counsel for the petitioner that without knowing the quantity of intoxicant, the offence under Section 8(c) read with 22(c) of NDPS Act would not attract, but would only attract the offence under Section 22(a) of

¹ 1980 2 SCC 565

² 1992(3) ALT 21

NDPS Act, it is considered fit to grant anticipatory bail to the petitioner.

9. Accordingly, the Criminal Petition is allowed and the petitioner shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner is directed to surrender before the Station House Officer, Chatrinaka 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 shall abide by the conditions stipulated under Section 438(2) of Cr.P.C and shall co-operate with the Investigating Officer in investigating the case.

Miscellaneous applications, pending if any, shall stand closed.

Date: 28.02.2024
ssp

Dr. G.RADHA RANI, J