

THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL PETITION Nos.2183 and 2186 of 2024

COMMON ORDER:

A common order is passed in both the petitions as these petitions are interconnected and pertaining to the same petitioner.

2. Criminal Petition No.2183 of 2024 is filed by the petitioner / arrayed as A7 under Section 438 of Code of Criminal Procedure for grant of anticipatory bail to release him in the event of his arrest in Crime No.1386 of 2023 on the file of PS Gachibowli, registered for the offences under Section 8(c) read with Section 22(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The case of the prosecution in brief was that on 13.12.2023 at 05:30 hours reliable information about two persons transporting alprazolam, the Sub-Inspector of Police of PS Gachibowli informed the same to the Station House Officer and along with two Police Constables proceeded to the alleged spot opposite B.Bitcha Reddy Sweets, in front of KS Bakers, Sriram Nagar, A-Block, Kondapur and found A1 and A2, recorded their confession cum seizure panchanamas and seized 7 kgs of alprazolam powder from A1 and Rs.19,00,000/- cash from A2. As per the confession of A1 and A2, they were father and son and A1 was into the business of purchasing alprazolam from (1)

Pramod Singh, R/o. Delhi, (2) Bhooma Vittal Goud, (3) Bhooma Narender Goud, R/o. Nizamabad and was selling the same to known persons i.e. Gundumalla Venkataiah (petitioner herein), Golla Ramesh @ Ramu, Kamatam Nagendra Goud, Aadirala Krishnaiah Goud, Bandari Surender Goud. On 07.12.2023 he obtained 34 kgs of alprazolam in courier through Metro Transport Service and out of the 34 kgs, he sold 17 kgs to the petitioner herein, who stated that he would give the amount later, 10 kgs to Gundumalla Ramesh @ Ramu who gave the advance amount of Rs.19,00,000/- which he gave to accused No.2. The accused 1 and 2 were arrested and remanded to judicial custody on 13.12.2023.

4. Criminal Petition No.2186 of 2024 is filed by the petitioner, who was arrayed as A3 under Section 438 of Code of Criminal Procedure in the event of his arrest in Crime No.894 of 2023 on the file of PS Shadnagar, registered for the offences under Sections 8(c) read with Section 22(c), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

5. The case of the prosecution in Crime No.894 of 2023 was that on receipt of credible information on 25.12.2023 at 09:00 hours after obtaining instructions from the Station House Officer, the woman Sub-Inspector of Police of PS Shadnagar along with her staff proceeded to Akula Mallesham Function Hall, New City Colony, Pargi Road, Ranga Reddy District and at about

10:00 AM found a car stopped in front of Sakkubai Nilayam, New City Colony and that a person got down from the car with a bag and when another person arrayed as A4 (brother of the petitioner herein) came near that person from the compound of Sakkubai Nilayam. She caught hold both of them and seized 2 kgs of alprazolam powder from A2 and on interrogation came to know that he came to sell the 2 kgs of alprazolam to A4. Thereafter, brought both the accused persons along with the seized contraband to the Police Station and lodged the report. A2 and A4 were arrested and remanded on 25.12.2023.

6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

7. Learned counsel for the petitioner submitted that the petitioner filed anticipatory bail petition vide Criminal Petition No.12505 of 2023 in Crime No.1386 of 2023 before this Court, which was heard on 22.12.2023 and at the instance of Additional Public Prosecutor for getting instructions, the matter was posted to 28.12.2023. Meanwhile, the brother of the petitioner was harassed, for which the brother of the petitioner filed a third party affidavit in Criminal Petition No.12505 of 2023 on 22.12.2023. Thereafter Police got registered FIR No.894 of 2023 implicating the petitioner as well as his brother. The brother of the petitioner shown as A4 in FIR No.894 of 2023 was released on regular bail by this Court by order dated 30.01.2024 in Criminal Petition No.709 of 2024, as

no contraband was seized from his possession. In FIR No.894 of 2023, the petitioner preferred anticipatory bail vide Criminal Petition No.12925 of 2023. In both the applications i.e. Criminal Petition Nos.12505 and 12925 of 2023, two separate interim orders were passed by this Court on 03.01.2024 directing the Police not to arrest the petitioner in both the FIRs and directed the petitioner to appear before the concerned Station House Officer everyday at 10:00 AM before the Police Station Shadnagar and at 04:00 PM before Police Station Gachibowli. The said interim orders were extended up to 25.01.2024. Thereafter, this Court modified the orders dated 03.01.2024 and 10.01.2024 directing the petitioner to appear before the Station House Officer on even days before PS Shadnagar and on odd days before PS Gachibowli up to 05.02.2024. The petitioner complied the orders of this Court without any default. Thereafter, this Court dismissed both the Criminal Petition Nos.12505 and 12925 of 2023. There was change in circumstances in filing the present petitions. Accused No.4 was enlarged on regular bail by order dated 30.01.2024. The petitioner was apprehending his arrest. He further contended that except for the confessional statements of A1 and A2, which was inadmissible, there was nothing on record to incriminate the petitioner. The petitioner was neither present at the alleged spot nor anything was seized from him and relied upon the judgments of the Hon'ble Apex Court in **Vijay Singh v. State of Haryana**¹,

¹ 2023 SCC Online SC 1235

Ragini Dwivedi @ Gini @ Rags v. State of Karnataka², State (by Narcotic Control Bureau) Bengaluru v. Pallulabid Ahmad Arimutta and Another³, Toofan Singh v. State of Tamilnadu⁴, wherein it was held that the confessional statements of the accused and the statements made under Section 67 of Narcotic Drugs and Psychotropic Substances Act were inadmissible.

8. Learned Additional Public Prosecutor contended that the earlier petitions filed by the petitioner for anticipatory bail was dismissed by this Court on 05.02.2024. There were no changed circumstances since the dismissal of the earlier bail applications and prayed to dismiss the anticipatory bail applications filed by the petitioner.

9. Perused the record.

10. The only allegation made against the petitioner was based upon the confessional statement of the co-accused No.1, who stated that he had sold the contraband alprazolam of about 17 kgs to the petitioner herein.

11. In **Vijay Singh v. State of Haryana** (cited supra), the Hon'ble Apex Court while granting anticipatory bail to the petitioner therein observed that:

“The allegations in the FIR are that 1.7 kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was

² (2021) 16 SCC 719

³ (2022) 12 SCC 633

⁴ (2021) 4 SCC 1

not present at the spot but was named by the accused. That apart, there is no other material to implicate the petitioner. Having regard to the circumstances, the petitioner is directed to be enlarged on anticipatory bail subject to the terms and conditions as the trial court may impose.”

12. In **State (by Narcotics Control Bureau) Bengaluru v. Pallulabid Ahmad Arimutta and Another** (cited supra) and a batch of cases, the Hon'ble Apex Court while relying upon its earlier judgment in **Toofan Singh v. State of Tamilnadu** (cited supra), held that:

“A confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession / voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail.”

13. Thus, the Hon'ble Apex Court in all the above cases held that the confessional statement of the co-accused cannot be the basis for arresting other petitioners. In the present cases also, except the confession of the co-accused, there is no other evidence against the petitioner herein. Even as per the Additional Public Prosecutor, the petitioner regularly appeared before the concerned Station House Officers as directed by this Court while granting interim bail. Though the petitioner was appearing regularly before the concerned Station House Officers, nothing could be recovered from his

possession by the concerned Investigating Officers. As no contraband was recovered from the possession of the petitioner and the petitioner was not present at the scene of offence when the contraband was recovered from the possession of the other co-accused and A4 (brother of the petitioner herein) from whom also no contraband was seized, was also enlarged on regular bail, it is considered fit to enlarge the petitioner on bail in the event of his arrest in the above Crime Numbers.

14. In the result, Criminal Petition Nos.2183 and 2186 of 2024 are allowed and the petitioner is released on anticipatory bail subject to the following conditions:

- i. The petitioner is directed to surrender before the Station House Officer of PS Shadnagar and PS Gachibowli within a period of 15 days from the date of this order and on such surrender, the concerned Station House Officers of PS Shadnagar and PS Gachibowli shall release the petitioner on anticipatory bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty Thousand Only) in each case with two sureties for the like sum each to the satisfaction of the Station House Officers of PS Shadnagar and PS Gachibowli.
- ii. The petitioner shall abide by the conditions laid down under Section 438(2) of Cr.P.C. and he shall appear before

the Investigating Officer or the trial court as and when his presence is required.

As a sequel, miscellaneous applications pending in these petitions if any shall stand closed.

Dr. G.RADHA RANI, J

Date: 28th February, 2024
Nsk.