

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.2288 OF 2024

ORDER:

This criminal petition is filed under Section 438 Cr.P.C. by the petitioner - accused for grant of anticipatory bail in Crime No.175 of 2023 on the file of the Station House Officer, Kamatipura Police Station, Hyderabad, registered for the offence under Section 37-A of the Telangana State Excise Act, 1968 (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 20.30 hours, the Sub-Inspector of Police, Kamatipura Police Station, Hyderabad lodged a report stating that while he was patrolling along with staff, he received credible information about sale of spurious toddy at Toddy Shop beside Damana Sree Wines, Bahadurpura, Hyderabad, informed the same to his superior officers and obtained authorization. After securing the presence of two panch witnesses, along with his staff, he raided the said shop and found a person selling toddy. He served the search proceedings and on search found a blue colour drum full of Toddy weighing 225 kgs, white colour powder

weighing 10 grams and also 5 plastic bottles each of 750 ml.. He collected samples from the toddy, sealed them and brought to the police station. Basing on the said report, the above case was registered under Section 37-A of the TSE Act. 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.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent – State.

4. Learned counsel for the petitioner submitted that the petitioner was the licence holder of the toddy shop. 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 offence alleged against him. The police implicated the petitioner in the present case with false allegations. The petitioner filed Crl.P.No.11457 of 2023, before this Court seeking to quash the FIR, and this Court passed order dated 20.11.2023 directing the police not to take coercive steps against the petitioner pending investigation.

The petitioner was apprehending that police would arrest him on the pretext of chemical examination report and also on the ground that he was not complying with the instructions mentioned in the notice under Section 41-A Cr.P.C. As per Section 41-A (4) Cr.P.C., orders have to be passed by a competent court for arrest of the petitioner. This Court passed order on 20.11.2023 directing the police not to take coercive steps against the petitioner. The respondent could not plead ignorance of the said order, 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 persons, who were already on bail, re-arrest of accused, ignoring the earlier bail order was not permissible.

5. Perused Section 41-A(4) Cr.P.C. It reads as follows:

41A. Notice of appearance before police officer.—

(1)

(2)

(3)

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

¹ (2019) 17 SCC 362

6. As per this provision, even if the person, who was on notice under Section 41-A Cr.P.C. failed to comply with the terms of the notice, the police officer can arrest him only subject to the orders passed by a competent court. In the present case, there are orders passed by this Court in Crl.P.No.11457 of 2023 directing the police not to take any coercive steps. Hence, the police cannot arrest the petitioner ignoring the said order.

7. Considering the judgment of the Hon'ble Apex Court in **Manoj Suresh Jadhav's** case (*supra*), wherein it was held that:

“It is not permissible for the respondent-State to simply re-arrest the petitioners by ignoring order dated 02.06.2016 passed by the learned Additional Sessions Judge, Pune, which was in force at that time”,

and as the orders passed by this Court are in force and as the petitioner is apprehending his arrest, it is considered fit to enlarge the petitioner on anticipatory bail on certain conditions.

8. In the result, the Criminal Petition is allowed and the petitioner-accused is granted anticipatory bail, subject to the following conditions:

- i) The petitioner - accused is directed to surrender before the Station House Officer, Kamatipura Police Station, Hyderabad, within a period of fifteen (15) days from today, and on such surrender the Station House officer, Kamatipura Police Station, Hyderabad shall release the petitioner on bail on executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties each for a like sum each to the satisfaction of said Station House Officer.
- ii) The petitioner - accused shall abide by the other conditions stipulated in Section 438(2) of Cr.P.C. and shall appear before the Investigating Officer as and when directed by him and shall co-operate with the investigation of the case.

Miscellaneous applications, if any, pending, shall stand closed.

Date: 29.02.2024
ns

Dr. G. RADHA RANI, J