

THE HONOURABLE Dr.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.2553 OF 2024

ORDER:

This Criminal Petition is filed by the petitioner – Accused under Section 438 Cr.P.C. for grant of anticipatory bail in the event of his arrest in Crime No.358 of 2023 on the file of the Station House Officer, Asifnagar Police Station, Hyderabad, registered for the offence under Section 37-A of the Telangana State Excise Act, 1968 (for short ‘TSE Act’), which was subsequently 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 17:00 hours, on reliable information about selling adulterated toddy, the Additional Inspector of Police of P.S.Asifnagar, raided the Toddy Shop, situated at Asifnagar and found the petitioner herein conducting the business and on search of the premises they found three plastic drums in a room, two drums filled with water and another drum filled with toddy. On suspicion that toddy was adulterated, they have drawn the samples and seized the plastic drum

with 160 liters of toddy and brought to the police station and lodged the report.

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-Accused and the learned Additional Public Prosecutor.

5. Learned counsel for the petitioner submitted that the petitioner had applied for anticipatory bail before the II Additional Metropolitan Sessions Judge, Hyderabad, at Nampally, *vide* Crl.M.P.No.4276 of 2023 and by order dated 14.12.2023, the II Additional Metropolitan Sessions Judge, Hyderabad, granted bail to the petitioner for the offence under Section 37-A of TSE Act. The petitioner had also filed a Criminal Petition before this Court *vide* Crl.P.No.11304 of 2023 for quashing the proceedings in F.I.R.No.358 of 2023 and this Court *vide* order dated 17.11.2023 directed the Police not to take any coercive

steps but the respondent-Police filed a Memo seeking permission to arrest the petitioner/accused after alteration of Section of Law from 37-A of TSE Act to Section 8(c) read with 22 (c) of the NDPS Act.

5.1. He further submitted that the police had conducted raids in violation of Rules 3 and 27 of the Telangana State Excise Rules. The petitioner was apprehending arrest as the case was modified to 8(c) read with 22 (c) of the NDPS Act. The respondent could not plead ignorance of the orders passed in Crl.P.No.11304 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.

6. The learned Additional Public Prosecutor opposed grant of anticipatory bail to the petitioner stating that as the offence under Section 8(c) read with 22 (c) of the NDPS Act was invoked, the petitioner could not be released on anticipatory bail.

¹ (2019) 17 SCC 362

7. Perused the record. Considering that the petitioner was already granted bail for the offence under Section 37-A of TSE Act, and also obtained orders in Crl.P.No.11304 of 2023 for not taking any coercive steps and due to the alteration of Section of Law and the petitioner could not be arrested in view of 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.11304 of 2023 are in force, but as the petitioner is apprehending his arrest, it is considered fit to enlarge the petitioner on anticipatory bail on certain conditions.

8. Accordingly, the Criminal Petition is allowed and the petitioners -accused Nos.1 and 2 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner-Accused is directed to surrender before the Station House Officer, Asifnagar 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 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:07.03.2024
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Dr. G.RADHA RANI, J