

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.3043 of 2024

ORDER:

This Criminal Petition is filed by the petitioner/A2 under Section 438 of Cr.P.C. for grant of anticipatory bail in Crime No.335 of 2023 of Prohibition & Excise Station, Dhoolpet, Hyderabad, registered for the offence punishable under Sections 8(c) read with 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The case of the prosecution, in brief, was that on 19.10.2023 at 07:50 P.M., the Prohibition & Excise Sub-Inspectors of ESTF, Hyderabad along with the staff of Dhoolpet Police Station conducted route watch in front of Rahimpura playground and after sometime noticed a Maruti Suzuki Ciaz white colour car bearing registration No.TS 03 FA 7722 and on suspicion stopped the said car. They found A1 driving the said car. On enquiry, he revealed that he belonged to Maharashtra and on search of the car, they found a bag containing 10 brown colour taped bundles which weighed about 20.226 kgs and found them to be of dry ganja. The excise officials collected samples under the cover of panchanama

and brought A1 to the police station. A1 in his confession stated that he was working under his owner Mahender Singh (petitioner herein) and on the instructions of his owner, he was delivering the said contraband to the customers.

3. Heard the learned counsel for petitioner/A2 and the learned Additional Public Prosecutor representing the respondent-State.

4. Learned counsel for the petitioner/A2 submitted that no contraband was seized from the possession of the petitioner/A2. No material was gathered by the investigating officer to connect the petitioner with the offence except the confession of A1. The confession of co-accused was not admissible in evidence and relied on the Judgment of the Hon'ble Apex Court in *Tofan Singh v. State of Tamil Nadu*¹ and prayed to grant anticipatory bail to the petitioner/A2.

5. Learned Additional Public Prosecutor opposed grant of bail to the petitioner/A2 stating that the petitioner was involved in another case of similar nature which was numbered as S.C.No.8 of 2021 and the petitioner was also cited as A2 in the said case, the

¹ (2021)4 SCC 1

petitioner was having criminal antecedents and hence, he was not entitled for grant of anticipatory bail.

6. Perused the record.

7. Considering that no contraband was recovered from the possession of the petitioner/A2 and his name was implicated only basing upon the confession of A1 and as per the judgment of the Hon'ble Apex Court in ***Tofan Singh***'s case (1 supra), the confession of co-accused was not admissible in evidence and also considering the Judgment of the Hon'ble Apex Court in ***Vijay Singh v. The State of Haryana***², wherein also as per the facts of the said case, no contraband was seized from the possession of the petitioner therein and the petitioner therein was implicated basing on the confession of the co-accused, he was granted bail and the facts and circumstances of this case are also similar to the facts and circumstances of the case relied on by the learned counsel for the petitioner/A2, it is considered fit to grant anticipatory bail to the petitioner/A2 with certain conditions.

² SLP(crl.) No.1266/2023, dt.17.05.2023

8. Accordingly, the Criminal Petition is allowed and the petitioner/A2 shall be released on anticipatory bail subject to the following conditions:

- 1) The petitioner/A2 is directed to surrender before the Station House Officer, Prohibition & Excise Station, Dhoolpet, 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/A2 on bail, on his executing a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer.
- 2) The petitioner/A2 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 petitions pending, if any, shall stand closed.

Date: 26.03.2024
ssp

Dr. G. RADHA RANI, J