

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.3294 OF 2024

ORDER:

This Criminal Petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”) seeking anticipatory bail to the petitioner-Accused No.2 in Crime No.21 of 2024 on the file of the Station House Officer, Prohibition and Excise Station, Patancheru, Sanga Reddy District, registered for the offence under Section 8(c) read with 20(b)(ii)(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 03.02.2024 at about 9.50 PM, the Prohibition and Excise Inspector, AC Enforcement, Medak at Sangareddy along with his staff conducted route watch at Patancheru and during the said route watch they stopped one Baleno Car bearing registration No.TS 27 F 7775. On enquiry with the driver of the car, he revealed his particulars. The Officer on search of the car found two white colour polythene bags in the dickey of the car and two polythene bags in the seat and on opening the bags found ganja in them weighing about 84 kgs. On enquiry with the driver of the car, who was shown as A1, he revealed that he was instructed by A2 to collect the ganja from Andhra Odisha border area

and to transport the same to Maharashtra and that he would be paid Rs.50,000/- for transportation. The contraband was seized and A1 was arrested on 03.02.2024.

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 no contraband was seized from the possession of the petitioner-A2. The police had not gathered any material to connect the petitioner with the offence. Except the confession, there was no other material to substantiate the involvement of the petitioner in the above crime and relied upon the judgments of the Hon'ble Apex Court in **Vijay Singh v. State of Haryana**¹ and **Toofan Singh v. State of Tamilnadu**².

5. Learned Additional Public Prosecutor reported that a commercial quantity of contraband dry ganja of about 84 kgs., was seized from the possession of A1, who was transporting the same on the instructions of the petitioner herein and as such, he was not entitled for grant of anticipatory bail.

6. Perused the record. Considering that except the confession of A1, there was no other material to connect the petitioner-A2 with the above crime

¹ 2023 SCC Online SC 1235

² (2021) 4 SCC 1

and considering the judgments of the Hon'ble Apex Court relied by the learned counsel for the petitioner wherein on similar facts in **Vijay Singh** case (1 supra) where no contraband was seized from the possession of the petitioner therein and there was no evidence against the petitioner other than the confession, he was released on bail and as per the judgment of the Hon'ble Apex Court in **Toofan Singh** case (2 supra) the confession of the co-accused was not admissible in law, it is considered fit to grant anticipatory bail to the petitioner on certain conditions.

7. Accordingly, the Criminal Petition is allowed and the petitioner-A2 is granted anticipatory bail subject to the following conditions:

1. The petitioner-Accused No.2 is directed to surrender before the Station House Officer, Prohibition and Excise Station, Patancheru, Sanga Reddy District, within a period of (15) days from the date of this order and 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.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.

Miscellaneous applications, pending if any, shall stand closed.

March 26, 2024
KTL

Dr. G.RADHA RANI, J