

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.3687 OF 2024

ORDER:

This Criminal Petition is filed by the petitioner – Accused No.3 under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short “Cr.P.C”), to release him on regular bail in Crime No.154 of 2024 on the file of Begumpet Police Station, Hyderabad registered for the offence under Section 8(c) read with 22(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

2. The case of the prosecution in brief was that on 09.03.2024 at 17:30 hours, the Detective Inspector of Police, Begumpet Police Station, Hyderabad received credible information that a person by name Mutha Kishore Kumar-A1 was selling the tablets and syrups made with the contents of NDPS drug to the customers at Mahaveer Medical Shop at Rasoolpura, Secunderabad. On compliance of mandatory requirement under Section 42(2) of NDPS Act, he along with the panch witnesses and his staff proceeded to the said place and apprehended A1 and took him into custody. On enquiry, A1 stated that the Drug license was in the name of B.Avinash and without the presence of license holder, he was selling

the scheduled H1 Drugs like Nitrovet etc., without doctor's prescription to the customers at the medical shop on high price.

2.1. The Detective Inspector also secured the presence of the Drug Inspector of Secunderabad and also a Gazetted Officer and recorded the confession-cum-seizure panchanama of A1 and A2(Muslam Raju who was the salesman in the said shop) and seized several scheduled drugs under the cover of panchanama in the presence of the witnesses.

2.2. Basing on the confession of A1, they also apprehended A3, who was the Medical Representative at Mankind Pharma and who supplied the said medicines to A1. On enquiry, A3 admitted that he supplied the medicines, as per the requirement of A1 from P.S.Global Agency, which was located behind Gokul theatre, Erragadda, Hyderabad in the name of Madeeha Medicals, Prakash Nagar. The Detective Inspector recorded the confession of A3 and lodged the report. He effected the arrest of A1 to A3 and produced them before the Court.

3. Heard the learned Counsel for the petitioner-A3 and the learned Additional Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner-A3 submitted that the medicines seized were not prohibited drugs. Each tablet and syrup which were seized from the shop of A3 would not have drug content more than the small quantity. The NDPS drug content was less than commercial quantity. The petitioner was in custody since 09.03.2024 and prayed to enlarge the petitioner on bail.

5. Learned Additional Public Prosecutor opposed grant of bail to the petitioner stating that a commercial quantity of NDPS drugs were seized from the shop of A1 and the present petitioner-A3 supplied the same to A1 and was assisting him in selling the contraband drugs without any doctor's prescription. However, the learned Additional Public Prosecutor reported no criminal antecedents against the petitioner.

6. Perused the record. As seen from the record, a number of drugs were seized from the shop of A1 viz., as follows:

1). Magnatuss-t-Cough Syrup (Codeine Phosphate & Triprolidine Hydrochloride Syrup) - 230 bottles of 100 ml each weighing 23 liters (Commercial Quantity), (2) Tramasure 100 (Tramadol Hydrochloride Injection) 70 Injections, (3) Spasmo-Proxyvon Plus (Dicyclomine

Hydrochloride, Tramadol Hydrochloride & Acetaminophen Capsules) – 570 Capsules, (4) Nitravet (Nitrazepam Tablets IP 10 mg) - 60 Tablets, (5) Ultra King (Tramadol Hydrochloride Acetaminophen Tablets USP) - 30 Tablets, (6) Zolfresh 10 mg (Zolpidem Tartarate Tablets IP 10 mg), (7) Restyle 5 mg (Alprazolam IP 0.5 mg) - 30 Tablets, (8) Etizolam Tablets (Etizolam Tablets IP) - 30 Tablets, (9) Cloba 5 (Clobazam Tablets IP 5 mg) - 30 Tablets, (10) Lonazep 0.25 mg (Clonazepam Tablets IP) - 30 Tablets and (11) Librium 10 mg (Chlordiazepoxide Tablets IP) 30 Tablets.

7. The Hon'ble Apex Court in ***Hira Singh and Another Vs. Union of India and Another*** in Crl.A.No.722 of 2017 held that in case of seizure of mixture of Narcotic drugs or Psychotropic substances with one or more neutral substances, the quantity of the neutral substances is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial” quantity of the Narcotic drugs or psychotropic substances.

8. Manufactured drug is defined in Section 2(xi) of the NDPS Act and it includes all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate besides any other

narcotic substance or preparation declared to be as such by notification in the official gazette. As per the notification, if any “manufactured drug” within the meaning of Section 2(xi)(b) of NDPS Act contains not more than 100 mg of Methyl Morphine, commonly known as codeine, per dosage unit, and in that drug, codeine is compounded with one or more ingredients and if in the said drug the concentration of codeine is not more than 2.5% in undivided preparation, and the drug has been established in therapeutic practice, it will not be a “preparation” within the meaning of “manufactured drug” and, therefore it cannot be considered as a “narcotic drug”.

9. As seen from the record, the Magnatuss cough syrup of 230 bottles were seized and as per the label, the codeine content was stated to be 0.010 Mg as submitted by the learned counsel for the petitioner. As such, the codeine percentage in the said concentration is not more than 2.5% to consider that the said drug was a Narcotic drug. This Court is not dissecting each and every drug seized to find out whether the manufactured drugs are containing the Narcotic drug content more than the extent permitted or not but had only taken the cough syrup as one of the examples. *Prima facie* these drugs are not

prohibited drugs and the manufacturer of these drugs was not arrayed as an accused. Whether the manufacturer was having a license or not to manufacture these drugs is not considered by the Investigating Officer. The only allegation against the petitioner – A3 was that being a Medical Representative he supplied the said drugs on duplicate bills. If the petitioner was supplying the said drugs to the medical shops with duplicate bills, action can be taken against him for violation of the Drugs and Cosmetic Act or Rules prescribed there under but the same may not fall under NDPS Act. As the guilt or otherwise of the accused persons can be determined only after a full fledged trial and only after receipt of the chemical examiner's report it can be known with regard to the quantity of the narcotics present in them and whether they were exceeding the permitted limit and thereafter also it would be the 'manufacturer' who would be responsible for it as it was reported that there were no criminal antecedents against the present petitioner herein, this Court considers that he cannot be equated to a drug peddler and as such, it is considered fit to enlarge the petitioner – Accused No.3 on bail.

10. Accordingly, the Criminal Petition is allowed and the petitioner – Accused No.3 shall be released on regular bail subject to

the following conditions:

- i) The petitioner – Accused No.3 shall execute 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 learned I Additional Metropolitan Sessions Judge, Hyderabad.
- ii) The petitioner – accused No.3 shall abide by the conditions stipulated in Section 437(3) of Cr.P.C.
- iii) The petitioner – accused No.3 shall not involve in any other cases during the pendency of the trial. If any adverse reports are received against him, the bail granted to him is liable to be cancelled.

Miscellaneous applications, pending if any, shall stand closed.

Dr. G.RADHA RANI, J

Date: 25.04.2024
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THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.3687 OF 2024

Dated:25.04.2024

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