

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.245 of 2023

ORDER:-

A-5 in Crime No.293 of 2021 of V.Madugula Police Station filed this petition under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking for his release on regular bail.

The offences alleged against him are under Sections 20(b)(ii)(C) r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Learned Additional Public Prosecutor appearing for the State opposed the prayer made in the petition and sought for dismissal of the petition.

F.I.R. in this case was registered on 02.11.2021 and thus it was more than 14 months ago. In the first phase of the investigation, Ganja of 60 kgs was recovered from the physical possession of A-2 to A-4 and that was done on 02.11.2021. Subsequently, as the Investigating Agency could not complete its investigation within the statutory period in 180 days, those three individuals having applied for statutory bail, obtained the same from the learned Special Judge for Trial of Offences under NDPS Act, Visakhapatnam.

While interrogating the accused who were arrested, the Investigating Agency found that this petitioner/A-5 is also involved in this crime. Pursuant to that lead, they effected the arrest of this petitioner on 15.11.2022 and thereafter he was duly remanded to judicial custody. This petitioner claimed his innocence and sought for bail before the learned Special Judge, but by an order, dated 21.12.2022, it was dismissed.

The submission of learned Additional Public Prosecutor is that the offence alleged is very heinous and when this accused is involved in such offence and while the investigation is under progress, bail is not warranted. However, the argument of the learned counsel for the petitioner is that there is absolutely no reasonable cause for the very arrest of this petitioner.

It is in the context of such argument when the record is looked into, it is seen that during the course of investigation, the Inspector of Police found that through PhonePay there was electronic transfer of money of Rs.45,000/- into the account of this petitioner and that was made through the mobile phone of A-3. The remand report indicates that the said electronic transfer occurred on 02.11.2021. Thus, the only nexus so far established by the Investigating Agency is the transfer of Rs.45,000/- from the account of A-3 to the account of A-5. Since the learned Additional Public Prosecutor referred to the

remand report and the alleged confession of this petitioner to the police, when this Court looked into it, it is seen that this petitioner allegedly confessed about cultivating Ganja.

In this regard, for the pointed question raised by this Court as to whether from the date of the arrest on 15.11.2022 till now whether the Investigating Officer ever reached to the place where this petitioner allegedly cultivated Ganja or not, the reply is mere silence. Thus, the Investigating Agency feels satisfied by recording confession of an alleged accused without finding it necessary to find out and gather evidence about alleged cultivation of Ganja. The fact remains that as per the record, no contraband was seized from the possession of this accused. His only link is stated to be receipt of money. As per the record, even his mobile, which is stated to be available in his own house, is not even collected so far. When nothing was seized from him and no material is brought on record showing possible participation of this accused in this narcotic offence, it emerges clearly that there are no reasonable grounds to believe that he is guilty of the offences alleged. It is in these circumstances and considering the length of detention in jail for about two months and the progress that is made during the course of investigation and the release of all other accused, the prayer of the petitioner shall be granted.

In the result, the Criminal Petition is allowed. The petitioner shall be released on bail on his executing a personal bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties each to the satisfaction of the learned Special Judge for Trial of Offences under NDPS Act, Visakhapatnam. The petitioner shall make himself available for investigation at all times and shall not tamper with evidence. He shall mark his attendance before the Investigating Police on 25th of every month till the time the police complete investigation and file report.

Dr. V.R.K.KRUPA SAGAR, J

Date: 12.01.2023

AKN

THE HON'BLE SRI JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.245 of 2023

Date: 12-01-2023

AKN