

2022 SCC OnLine TS 2781

In the High Court of Telangana at Hyderabad
(BEFORE K. SURENDER, J.)

Rishab Srivatsav ... Petitioner/Accused No. 6;
Versus

State of Telangana, Through Public Prosecutor, Through S.H.O.,
P.S. S.R. Nagar ... Respondent/Complainant.

Criminal Petition No. 8529 of 2022
Decided on September 28, 2022

Petition under Section 437 and 439 of Cr.P.C. praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to enlarge the Petitioner/Accused No. 6 on bail in Crime No. 673 of 2022 of P.S. S.R. Nagar, Hyderabad on the file of III Additional Chief Metropolitan Magistrate, Hyderabad.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri. NAGESHWAR RAO PUJARI, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent.

The Order of the Court was delivered by

K. SURENDER, J.:— This Criminal Petition is filed under Sections 437 and 439 of Criminal Procedure Code, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner who is arrayed as Accused No. 6 in Crime No. 673 of 2022 of PS. S.R. Nagar, Hyderabad, on the file of the learned III Additional Chief Metropolitan Magistrate, registered for the offences punishable under Sections 8(c) r/w. 22(C), 27 of NDPS Act, 1985.

2. Heard learned counsel for the petitioner/Accused No. 6 and/the learned Assistant Public Prosecutor for the respondent-State. Perused the record.

3. The case against the petitioner is that the police, S.R. Nagar Police Station on information about some persons being in possession of psychotropic substance drug and they gathered near Vellanki Foods, Madhura Nagar SR Nagar, Hyderabad, went to the place of occurrence. At that time, the police found two persons exchanging some material and immediately they apprehended them and after apprehension, they found MDMA drugs and pills in their possession. Thereafter, the police informed the right about being searched before Gazetted Officer as mandated under Section 50 of the NDPS Act.

4. As seen from the complaint itself, the police ought to have informed the right under Section 50 of the NDPS Act, once they have apprehended and not after recovery of the alleged drugs. Under Section 50 of the NDPS act, it is mandatory that information has to be given to the accused whether he intended to be searched before Gazetted Officer, only when denied, the police can search such persons, failing which in the event of accused who are apprehended informs the police that he intends to be searched before the Gazetted Officer, he shall be invariably taken before the Gazetted Officer. Failure to inform the same would amount to violation of Section 50 of the NDPS Act.

5. The Constitutional Bench of Hon'ble Supreme Court in the case (1999) 6 SCC 172 - *State of Punjab v. Baldev Singh*, has found that it is mandatory and not directory regarding compliance of Section 50 of NDPS Act. The protection, which has given under Section 50 of NDPS Act cannot in any manner be violated. In view of the aforesaid reasons the petitioner is entitled to released on regular bail.

6. Accordingly, the petitioner is released on regular bail, on following conditions:
- i) The petitioner/Accused No. 6 shall execute a personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum each to the satisfaction of the learned III Additional Chief Metropolitan Magistrate, Nampally.
 - ii) The petitioner/Accused No. 6 shall appear before the concerned Station House Officer on every Monday between 10.30 AM and 01.00 PM for a period of eight weeks or until filing of charge sheet whichever is earlier.
 - iii) The petitioner/Accused No. 6 shall abide by the other conditions stipulated in Section 437(3) of CrP.C. As a sequel, miscellaneous applications, pending if any, shall stand closed.

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