

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.10408 of 2022

ORDER:

1. Heard Sri Srinath Reddy, learned counsel who argued on behalf of Sri Nageshwar Rao Pujari, learned counsel on record for the petitioner as well as the learned Additional Public Prosecutor who is representing the Respondent.

2. Seeking the Court to enlarge the petitioner, who is arrayed as Accused No.1 in Crime No.801 of 2022 of S.R.Nagar Police Station, Hyderabad, on bail, the present Criminal Petition is filed.

3. Making his submission, learned counsel for the petitioner contends that the contraband, i.e. Hash Oil, alleged to have been seized from the possession of the petitioner is 1Kg and that does not fall within the ambit of the definition of 'commercial quantity'. Learned counsel in this regard referred to the definition of 'commercial quantity' as laid down under Section 2(viia) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter be referred as NDPS Act, 1985, for brevity). The said provision reads as under:-

2(via) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette

4. Through Notification No.SO/155(E), dated 19.10.2021, specifications of small quantity and commercial quantity were issued by the Central Government. The relevant entry is found at Entry No.23 where the small quantity is mentioned as 100 grams and Commercial quantity as 1Kg. As per the version of the prosecution, 1Kg of Hash Oil was seized from the possession of the petitioner herein. Learned counsel states that exceeding 1Kg, the contraband falls within the ambit of commercial quantity and exact 1Kg does not fall within the ambit of commercial quantity. In this regard, learned counsel also states that the contraband was weighed along with the bottle within which the contraband was present and therefore, it should be taken as less than 1Kg.

5. Per contra, the learned Additional Public Prosecutor submits that totally 1 ½ Kg of Hash Oil was purchased by

the petitioner herein and he sold ½ Kg of it and the remaining 1 Kg was seized by the police. As per the version of the prosecution, the petitioner has committed offence punishable under Section 8(c) r/w.20(b)(ii) of NDPS Act. The Act makes any person who produces, manufactures, possesses, sells, purchases, transports, imports interstate, exports interstate of the contraband punishable. As per the version of the prosecution, ½ Kg of Hash Oil was sold and the remaining 1Kg was seized. Also as per the version of the prosecution, the petitioner confessed that he sold ½ Kg of Hash Oil. However the learned counsel for petitioner states that the said confessional statement is invalid in the eye of law. Admittedly, the case is pending investigation. Therefore, it cannot be held now that the investigating agency, independent of the alleged confessional statement, would not be in a position to investigate and find out who were the alleged purchasers of the Hash Oil that was alleged to have been sold by the petitioner herein. However, no submission is made by the learned Additional Public Prosecutor that any efforts are being made to trace

out the purchasers of the said contraband. It is brought to the notice of this Court that the petitioner is in judicial custody since 17.10.2022. Therefore, without definite information before this Court that the petitioner was found in possession of the commercial quantity of the contraband, this Court is not inclined to apply Section 37 of the NDPS Act denying the relief sought for. As the case was registered more than a month back and the petitioner is in judicial custody since then and having considered the opinion expressed thus in the foregoing discussion, this Court considers desirable to honour the request of the petitioner, however, conditionally.

7. Resultantly, the Criminal Petition is allowed with the following conditions:-

- (i) The petitioner/Accused No.1 shall be enlarged on bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for like-sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in

the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

- (ii) The petitioner/Accused No.1 shall report before the Station House Officer, S.R.Nagar Police Station, on every Monday between 10.30 AM and 12.00 PM till filing of final report.
- (iii) The petitioner/Accused No.1 should not involve in any unlawful activity.
- (iv) The petitioner/Accused No.1 should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused No.1 should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused No.1 should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused No.1 should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.

- (viii) In case the petitioner/Accused No.1 holds a passport, he shall surrender the same if the same is not seized till now.
- (ix) The petitioner/Accused No.1 should ensure his presence whenever required by the Court or Police.
- (x) The petitioner/Accused No.1 shall not leave India without previous permission of the court concerned.
- (xi)The petitioner/Accused No.1 shall file an affidavit before the Court concerned disclosing the following particulars:-
- (1) Contact number
 - (2) Mail address
 - (3) Residential particulars.

In case, there is any change in the aforementioned details, the petitioner shall intimate the Court concerned by giving a fresh affidavit duly mentioning the change. He shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date: 07.12.2022

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