THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.10524 of 2018

ORDER:

This Criminal Petition, under Section 439(2) of the Code of Criminal Procedure, 1973, is filed by the petitioner-The Intelligence Officer, Directorate of Revenue Intelligence, Bangalore Zonal Unit, Bangalore, requesting to cancel the regular bail granted under Section 167 (2) Cr.P.C. to the respondents-A.1 to A.3, vide order, dated 12.07.2018, passed by the Metropolitan Sessions Judge, Hyderabad, in Crl.M.P.No.2140 of 2018 in F.No.DRI/HZU/48C/ENQ-3 (INT-Nil)/2018 of Directorate of Revenue Intelligence, Zonal Unit, Hyderabad.

2. Heard the submissions of Sri P.Dharmesh, learned Special Public Prosecutor for the petitioner and Sri K.Jaya Kumar, learned counsel for the respondents-accused, apart from perusing the material on record.

3. Learned Special Public Prosecutor would contend that the respondents-accused are being prosecuted for the offences under Section 8(c) read with Section 21(c), 22(c), 23(c), 28 and 29 read with Section 38 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act) and they were arrested and remanded to judicial custody on 12.01.2018; the Court of Session, under the premise that the charge sheet was not filed within 180 days from the date of remand of the respondents-accused, was pleased to grant bail, vide order dated 12.07.2018, under Section 167(2) Cr.P.C.; in fact, a single charge sheet in the subject case was filed on 06.07.2018 before the Additional

Sessions Court, Omerga, Maharashtra State, as a part of subject crime arose within the jurisdiction of the said Sessions Court at Omerga; though the charge sheet is filed within 180 days from the date of remand of the respondents-accused, the Metropolitan Sessions Judge, Hyderabad was pleased to grant bail to the respondents-accused, which is erroneous; and ultimately, prayed to set aside the impugned order.

4. On the other hand, learned counsel for the respondents-accused would contend that no charge sheet was filed within the stipulated period; therefore, the Court of Session justified in granting bail in favour of the respondents-accused under Section 167(2) Cr.P.C.; and ultimately, prayed to sustain the impugned order.

5. In view of the submissions made by both sides, the point that arise for determination is, whether the bail granted under Section 167 (2) Cr.P.C. in favour of the respondents-accused, vide order dated 12.07.2018, in Crl.M.P. No.2140 of 2018 by the Metropolitan Sessions Judge, Hyderabad, can be cancelled?

6. The case of the prosecution is that on some intelligence developed by D.R.I., Bangalore, Officers of D.R.I., Hyderabad, seized 45.874 kgs of Ketamine Hydrochloride, a psychotropic substance under the N.D.P.S. Act, 1985, which was being transported from Omerga in Maharastra State to Chennai via Hyderabad on 11.01.2018. In that connection, the respondents-accused, who were found in possession of the said contraband, were arrested and remanded to judicial custody by producing them before the VI Additional Chief Metropolitan Magistrate, Nampally,

Hyderabad, on 12.01.2018. The contraband was seized under a cover of panchanama, samples collected were sent to Custom House Laboratory, Chennai, by D.R.I., Hyderabad, and it was confirmed that the samples were of Ketamine Hydrochloride, a psychotropic substance. Subsequently, the criminal case records were transferred from IV Additional Metropolitan Sessions Court, Nampally to the Metropolitan Sessions Judge, Nampally, Hyderabad. The Directorate of Revenue Intelligence, Bangalore Zonal Unit, Bangalore had seized 500 grams and 9.60 kgs of Ketamine Hydrochloride on 11/12.01.2018 and 11.06.2018 from the factory at Omerga Taluq, Osmanabad District, Maharashtra State. The Ketamine Hydrochloride, which was seized at Hyderabad, was manufactured at M/s. Pragathi Electrical Works, Omerga, Maharashtra State. There is also confession of the respondents-accused, how they brought the said contraband from M/s. Pragathi Electrical Works, Omerga, Maharashtra State to deliver it at Chennai. As the contraband seized in Hyderabad was manufactured at M/s. Pragathi Electrical Works, Omerga, Maharashtra State and as subsequently, 500 grams and 9.6 kgs of Ketamine Hydrochloride was seized on 11/12.01.2018 and 11.06.2018 from the factory at Omerga, Maharashtra State, a consolidated charge sheet was prepared and filed on 06.07.2018 before the Additional Sessions Court at Omerga, Maharashtra State.

7. The case of the petitioner-complainant is that since part of the cause of action arose at Omerga, Maharashtra State, the Additional Sessions Court at Omerga, Maharashtra State has

jurisdiction and competent to try the subject case. Therefore, the filing of the charge sheet before the Additional Sessions Court at Omerga, Maharashtra State cannot be faulted. Admittedly, the respondents-accused were granted bail by the Court of Metropolitan Sessions Judge, Hyderabad, vide order dated 12.07.2018, in Crl.M.P. No.2140 of 2018 under Section 167(2) Cr.P.C. on the ground that though 180 days expired, charge sheet was not filed. The fact remains otherwise, a single charge sheet against these respondents-accused in connection with the contraband Ketamine Hydrochloride seized in Hyderabad, was filed before the Additional Sessions Court at Omerga, Maharashtra State on 06.07.2018. There is also record to establish that subsequently on filing an application on 23.07.2018, vide proceedings No.IO/DRI/BZU before the Metropolitan Sessions Judge, Hyderabad, the entire case records of the subject case were transferred to the Additional Sessions Court at Omerga, Maharashtra State.

8. The contention put forth on behalf of the respondents-accused is that no charge sheet was filed within 180 days and the Additional Sessions Court at Omerga, Maharashtra State has no jurisdiction to entertain the subject crime. The Court below was pleased to grant bail to the respondents-accused holding that charge sheet was not filed within 180 days from the date of remand, relying on the decision of the Hon'ble Supreme Court in Rakesh Kumar Paul vs. State of Assam[1]. As already discussed and pointed out supra, the filing of a single charge sheet by the

[1] AIR 2017 SC 3948

petitioner-complainant before the Additional Sessions Court at Omerga, Maharashtra State cannot be faulted as part of cause of action arose in its territorial jurisdiction. It can be culled out from the record that filing of the single charge sheet on 06.07.2018 before the Additional Sessions Court, Omerga, was not brought to the notice of the Metropolitan Sessions Court, Hyderabad for whatever reason may be. Since the factual aspect remains that the charge sheet was filed on 06.07.2018 i.e., well within the stipulated period of 180 days, the respondents-accused are not entitled for the benefit under Section 167(2) Cr.P.C. Under these circumstances, the respondents-accused are entitled for bail in accordance with the provisions laid down under the NDPS Act read with Sections 437 and 439 Cr.P.C. and accordingly they are entitled to work out the remedies under the said provisions.

9. It is contended on behalf of the respondents-accused that this Court has no jurisdiction to entertain the Criminal Petition, as the criminal case records were transferred to the Additional Sessions at Omerga, Maharashtra State. The Metropolitan Sessions Court, Hyderabad, which passed the impugned order, is within the territorial jurisdiction of this Court and the said order is assailable under Section 439 (2) Cr.P.C. before this Court. Hence, the said contention is not tenable.

10. In the result, the bail granted in favour of the respondents-accused under Section 167(2) Cr.P.C., vide order dated 12.07.2018 in Crl.M.P. No.2140 of 2018 by the Metropolitan Sessions Judge, Hyderabad is cancelled.

11. Accordingly, the Criminal Petition is allowed by setting aside the impugned order. Pending miscellaneous petitions, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

30th November, 2018
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