

[3239]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

WEDNESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE K SURESH REDDY ✓

CRIMINAL PETITION NO: 9881 OF 2023 ✓

Between:

Paladugu Venkata Girish, S/o.Rama Rao Aged about 46 years, Occ
Business, R/o.D.No.29-9-28. Ground floor, Govindarajulu Naidu Street,
Suryaraopet, Vijayawada.

Petitioner/Accused No.20 ✓

AND

The State of Andhra Pradesh, Rep.by its Public Prosecutor, High Court of
Judicature, at Amaravathi, Through PS Suryaraopet, NTR
Commissionerate, NTR District.

Respondent/Complainant ✓

Petition under Section 438 of Cr.P.C, praying that in the circumstances
stated in the memorandum of grounds filed in support of the Criminal Petition,
the High Court may be pleased to grant anticipatory bail to the
Petitioner/Accused No.2 herein in the event of his arrest in the above Crime
FIR No.313/2023, dated 5.9.2023 on the file of PS Suryaraopet, NTR
Commissionerate, NTR District (Krishna District).

COUNSEL FOR THE PETITIONER : SRI V CH NAIDU

COUNSEL FOR THE RESPONDENT : PUBLIC PROSECUTOR

THE COURT MADE THE FOLLOWING ORDER

HON'BLE SRI JUSTICE K. SURESH REDDYCriminal Petition No.9881 of 2023ORDER:

Accused No.2 in Cr.No.313 of 2023 of Suryaraopet Police Station, NTR Commissionerate, filed the present application under Section 438 Cr.P.C., seeking pre-arrest bail. The said crime was registered against the petitioner and others for the offence punishable under Section 22(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Case of the prosecution in brief is that, Accused No.1, who is none other than the wife of the petitioner/A.2, is running a medical wholesale business, under the name and style of 'M/s Jaya Sri Medical Agencies'. Accused No.3 is working as salesman in the said medical agencies. The business of the petitioner is to supply of medicines to its customers i.e., retail medical shops, medical practitioners, etc. The licence is valid up to 02.08.2025.

ii) While so, on 27.07.2023, the Drug Inspector, Zone-2, Vijayawada, conducted inspection and found certain irregularities and contravention of licence conditions and the provisions of Drugs and Cosmetics Act, 1940. It is alleged that the petitioner said to have sold huge quantity of different brands of *Alprazolam* tablets without issuing proper sale bills. It is further alleged that they have purchased 868.28 grams of *Alprazolam* tablets, produced fictitious sales bills and sold the said tables to the unlicensed persons to a tune of ~~498.33~~ grams.

iii) It is further alleged that the accused failed to produce purchase and sales bills for the financial years 2021-22 and 2022-23 for verification at the time of the inspection. On the basis of the said allegations, the present crime has been registered against Accused Nos.1 to 3.

3. Sri C. Raghu, learned senior counsel, assisted by Sri V.Ch.Naidu, learned counsel for the petitioner/A.2, strenuously contends that, it is Accused No.3 who was appointed as salesman and who supplied the *Alprazolam* tablets to various retail medical shops without the knowledge of the petitioner. He further contends that so far as Section 22(c) of the NDPS Act is concerned, it is not applicable to the facts of the present case. In support of his contention, he relied upon a judgment of the Delhi High Court in '*Directorate of Revenue Intelligence vs. Raj Kumar Arorara and another*' (Crl.Rev.P.No.494 of 2007 dated 13.07.2011. He further contends that A.1 was already granted anticipatory bail by this Court by order dated 13.10.2023 vide Crl.P.No.7247 of 2023. He further contends that at present, the petitioner is not running the said medical agencies, as the licence was already cancelled by order dated 07.09.2023 and as such, he requests this Court to grant pre-arrest bail to the petitioner.

4. On the other hand, learned Assistant Public Prosecutor, opposed the bail application, of course, he did not dispute the factum of granting anticipatory bail to Accused No.1.

5. This Court perused the entire material on record. In the judgment relied upon by the learned counsel for the petitioner i.e., *Raj Kumar Arorara's* case, para 24 reads as follows:

"24. Referring to the facts of the case, the Supreme Court noted that it was not in dispute that the medicines seized from the clinic of the accused therein fell within the purview of Schedules 'G' and 'H' of the Drugs and Cosmetics Act. It was also not in dispute that the same were mentioned in the Schedule to the NDPS Act, but did not find place in Schedule- I appended to the NDPS Rules. In this context, the Supreme Court made a categorical observation as under:

...If the said drugs do not find place in Schedule I appended to the Rules, the provisions of Section 8 of the 1985 Act would have no application whatsoever. Section 8 of the 1985 Act contains a prohibitory clause, violation whereof leads to penal offences thereunder.

The Supreme Court further observed that:

"In view of the fact that all the drugs being Item No. 1, 2, 3, 4, 6 & 7 being allopathic drugs mentioned in Schedules G and H of the Drugs and Cosmetics Act indisputably are used for medicinal purposes. Once the drugs are said to be used for medicinal purposes, it cannot be denied that they are acknowledged to be the drugs which would come within the purview of description of the expression "medicinal purposes.

Consequently, the Supreme Court was of the view that inasmuch as the NDPS Act would in itself not apply, Section 37 thereof would, prima facie have no application in view of the exception contained in Section 8 thereof read with the NDPS Rules. Resultantly, the Supreme Court declined to interfere with the order of the High Court granting bail."

6. In view of the above legal position and in view of the judgment of the Hon'ble Supreme Court referred to by the Hon'ble Delhi High Court in *Raj Kumar Arora's* case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

- i) Petitioner/A.2 is directed to surrender before the Station House Officer, Suryaraopet Police Station, NTR Commissionerate, on or before 9th February, 2024.

- ii) On such surrender, the Station House Officer, Suryaraopet PS is directed to release the petitioner/A.2 on bail, on his furnishing a personal bond for a sum of Rs,.25,000/- (Rupees twenty five thousand only) with two sureties for a like sum each, to his satisfaction.
- iii) On such release, the petitioner shall appear before the concerned Station House Officer, twice in a week i.e., on every Monday and Thursday, until further orders.
- iv) The petitioner/A.2 is directed not to hamper the investigation and tamper with the prosecution witnesses.

7. Accordingly, the criminal petition is allowed.

Sd/- S. SRINIVASA PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

For

SECTION OFFICER

To,

1. The Station House officer, Suryaraopet P.S, NTR Commissionerate, NTR District (Krishna District)
2. One CC to SRI. V CH NAIDU Advocate [OPUC]
3. Two CCs to PUBLIC PROSECUTOR, High Court of A.P[OUT]
4. One spare copy

HIGH COURT

KSR,J

DATED:31/01/2024

BAIL ORDER

CRLP.No.9881 of 2023

ALLOWED

