

(2016) 10 KAR CK 0070
In the Karnataka High Court
Case No : Criminal Petition No. 5002 of 2016

Srinivas Rao Chinta

APPELLANT

Vs

Intelligence Officer, D.R.I., Bangalore

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Citation : (2017) 346 ELT 45

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : S/Shri B.M. Shyam Prasad, Sr. Counsel and A. Ramesh Gowda, Advocate, for the Petitioner; Shri Jeevan J. Neeralgi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—This petition is filed by the petitioner/accused under Section 438 of Cr.P.C. seeking anticipatory bail, to direct the respondent-police to release the petitioner on bail in the event of his arrest in DRI/BZU/S-IV/INT-09/2016 pending on the file of Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru.

2. Brief facts of the prosecution case as per the complaint averments are that upon receipt of credible information the DRI officials have conducted raid on the factory premises of M/s. Hexagon Bio-Pharma Pvt. Ltd., and found some off white powder in a plastic bag and claimed that it contained ketamine weighing 13.800 kgs. and accordingly during the course of investigation, they have arrested one of the Directors and arrayed him as Accused No. 2 and on the alleged statement of Accused No. 2 who has purportedly stated that petitioner knows knowing about the manufacturing of the said ketamine, have issued notice to the petitioner to appear before them and to give his statement. Apprehending arrest by the respondent, petitioner has filed this petition seeking anticipatory bail.

3. Heard the arguments of the learned counsel appearing for the petitioner and also the learned Standing Counsel for the respondent.

4. Learned counsel for the petitioner during the course of his arguments submitted that so far as the petitioner is concerned he is only one of the Directors in the company and that the said psychotropic substance has been seized from the factory premises. Petitioner is totally unconnected with the said allegations and also about the said recovery. Accused No. 2 has been already granted bail by the order of this Court. The allegations in the complaint and other materials produced by the prosecution will not make out a case that petitioner has also committed the offence under Section 22 of the NDPS Act. As he apprehends arrest at the hands of respondent, he has approached the Court seeking anticipatory bail.

5. Learned Standing Counsel for the respondent has submitted that so far as the grant of bail to Accused No. 2 is concerned, he was in custody and after considering the materials this Court has opined that he is entitled to be released on bail. Looking to the materials collected, so also, the schedule to the NDPS Act, it clearly shows that offence has been committed under Section 22 of the NDPS Act. It is also his contention that to know the role of the petitioner in the alleged offence they have issued notice asking him to appear before the respondent and to give his explanation or statement. Hence, it is necessary to have custodial interrogation of the petitioner in relation to the alleged offence. It is also contended that the offences alleged are serious in nature. Hence, petitioner is not entitled to be granted with anticipatory bail.

6. I have perused the grounds urged in the bail petition, complaint averments, the materials produced by the learned counsel for the petitioner along with the petition, so also, the order passed by this Court dated 28-6-2016 in CrI. P. No. 3468/2016 so far as Accused No. 2 is concerned. Paragraph No. 13 of the said order reads as under :

"There is no dispute that Ketamine is covered under Schedule to the Act. But there is no specific substance for Ketamine Hydrochloride which is covered under the Act or under the Rules anywhere. Further added to that, there is no material for the present to show that the petitioner was manufacturing or he has kept those articles for the purpose of exporting the same or for selling the same. Admittedly, it is only the petitioner's Company, which is an intermediate unit, which only takes the orders, prepares the said Ketamine Hydrochloride, returns the same to the person who has given the order after completing its process. Therefore, during the course of evidence, it should be established beyond reasonable doubt that actually the petitioner was manufacturing Ketamine or he was having possession of the same for the purpose of selling or for the purpose of exporting the same."

Hence, ultimately, it is for the prosecution to establish beyond reasonable doubt during the course of evidence that petitioner was manufacturing ketamine or was

having possession of the same for the purpose of exporting or selling the same. The name of the petitioner is not arrayed as accused person. Since the respondent has taken steps by issuing notice to the petitioner calling upon him to appear before them, the apprehension of his arrest at the hands of the respondent is well founded. The petitioner has contended that he is totally unconnected with the alleged offence and is ready to abide by any reasonable conditions. To maintain the petition it is not necessary that FIR is to be registered against the petitioner. If he is able to make out a case of his reasonable apprehension of arrest at the hands of the respondent he can maintain the petition. Since the alleged offence under Section 22 of the NDPS Act is not exclusively punishable with death or imprisonment for life and as Accused No. 2 has been already granted bail by this Court, I am of the opinion that petitioner can be admitted to anticipatory bail by imposing reasonable conditions.

7. Accordingly, petition is allowed. The respondent-Police are directed to enlarge the petitioner on bail in the event of his arrest in DRI/BZU/S-IV/INT-09/2016 pending on the file of Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru, subject to the following conditions :

- i. Petitioner shall execute a personal bond for a sum of Rs. 2,00,000/- with two solvent sureties for the like sum to the satisfaction of the concerned arresting authority.
- ii. Petitioner shall not tamper with any of the prosecution witnesses, directly or indirectly.
- iii. Petitioner shall make himself available before the Investigating Officer for interrogation as and when called for and to co-operate with the further investigation.
- iv. Petitioner shall appear before the Jurisdictional Court within 30 days from the date of this order and to execute the personal bond and the surety bond.