

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

CRIMINAL PETITION No.11098 OF 2023

ORDER : (ORAL)

This criminal petition is filed under Section 482 of Code of Criminal Procedure 1973 (for short 'Cr.P.C.') seeking to enlarge the petitioner (accused No.7) viz., Mohd. Kaleem alias Mohd abdul Kaleem alias Arshad Khan in S.C. No.3 of 2023, arising out of Crime No.RC-01/2023/NIA/HYD, on the file of the learned IV Additional Metropolitan Sessions Judge cum Special Court for NIA Cases, Hyderabad.

2.1. The above session case was registered to prosecute the accused for the offences under Sections 18, 18B and 20 of the Unlawful Activities (Prevention) Act 1967.

2.2. The case of the prosecution is that on receipt of information by the Central Government suspecting credible inputs of one Zahed, son of Late Mohd. Abdul Waheed, of Moosarambagh, Hyderabad, that he is alleged to have committed terror related cases in Hyderabad by recruiting several youth on directions of Pakistan based handlers and conspired with his gang members to cause terror acts including blasts

and lone wolf attacks in Hyderabad, the above crime was registered and in the process of investigation, the petitioner was arrested on 16.02.2023 and produced before the learned XXII Additional Chief Metropolitan Magistrate, Hyderabad, and was remanded to judicial custody. After the investigation, the case was taken on file as S.C. No.3 of 2023 by the learned IV Additional Metropolitan Sessions Judge cum Special Court for NIA Cases, Hyderabad.

2.3. In the course of judicial custody, the petitioner volunteered and made a confessional statement which was recorded under Section 164(1) of Cr.P.C. on 08.05.2023. The petitioner filed Criminal Petition No.734 of 2023 on 11.05.2023 expressing his willingness to turn as approver and prayed for pardon. The learned Sessions Court granted pardon by the order dated 30.06.2023. Thereafter, the petitioner filed Criminal Petition No.903 of 2023 under Section 339 of Cr.P.C. seeking bail. The prosecution filed counter in the said criminal petition expressing no objection for grant of bail to the petitioner.

2.4. The learned Sessions Judge dismissed the bail application opining that the petitioner being an approver and in custody, cannot be granted bail by the trial Court as Sections 437 and 439 of Cr.P.C. are

not attracted in the cases of an approver and it is open for him to seek remedy under Section 482 of Cr.P.C. It is submitted that the second bail application filed by the petitioner in Criminal Petition No.1322 of 2023 was also dismissed on 26.10.2023.

3. By taking leave of this Court, the learned counsel for the petitioner filed additional grounds and the same are taken on file today i.e., 12.01.2024.

4. Heard Mr. Sharath Tadakamalla, learned counsel for the petitioner, and Mr. P. Vishnuvardhana Reddy, learned Special Public Prosecutor for NIA, appearing for the respondent, and perused the material on record.

5. It is submitted by the learned counsel for the petitioner that the petitioner has turned as approver, as such, he is not an accused, and therefore, it would be unjust to detain the petitioner in jail when he became an approver. The prosecution has no objection for releasing the petitioner on bail. The petitioner now acquired status of witness. There is no possibility of concluding trial within few months or in the near future. The learned counsel for the petitioner placed reliance on the decision of the High Court of Chhattisgarh, Bilaspur in **Rajkumar**

Sahu v. State of Chhattisgarh (Criminal Misc. Petition No.846 of 2020 dated 15.07.2020) wherein it is held as under:

“29. Thus, from the aforesaid discussion, it is quite vivid that this Court under inherent power of Section 482 of the Code can consider issue of grant of bail to the approver, having the status of witness only after being discharged from the case, the prohibition contained in Section 306(4)(b) of the Code is applicable to the Magistrate granting pardon, but it is not applicable to the Sessions Judge while he grants pardon to the accused under Section 307 of the Code and consequently, despite the legislative bar contained in Section 306(4)(b) as held by the Supreme Court in **A. Devendran** (supra) [(1997) 11 SCC 720], this Court can consider the application for releasing him on bail with certain conditions in its inherent jurisdiction under Section 482 of the Code in appropriate and reasonable case.

30. Now, the question for consideration would be, whether it is a case where the petitioner should be released on bail exercising the power under Section 482 of the Code subject to imposing reasonable conditions?

31. True it is that the petitioner was arrested on 28-3-2017 and thereafter, he was chare-sheeted and he has been granted pardon by the Judicial Magistrate in exercise of power conferred under Section 306(1) of the Code on 17-2-2020 and though the Supreme Court on 11-3-2019 directed the trial Magistrate to conclude the trial within one year from that day, but up to 10-3-2020, the trial Could not be

concluded and as pointed out by the State / respondent, only eleven witnesses have been examined till now and six witnesses apart from the petitioner are yet to be examined before the trial Court. Even after grant of pardon, now, the petitioner has completed three years from the date of his custody, particularly more than four months from the date of granting pardon i.e. 17-2-2020. As pointed out earlier by the Supreme Court in A.J. Peiris (supra) [AIR 1954 SC 616] followed by Jagjit Singh's case (supra), the moment the pardon was tendered to the accused on 17-2-2020, he is ceased to be an accused and become a witness and his status as on today is not that of an accused making Section 439 of the Code inapplicable since despite the order of the Supreme Court, the trial could not be concluded.”

6. The learned standing counsel for NIA submitted that the respondent has no objection for grant of bail to the petitioner on imposition of reasonable conditions.

7. In view of the fact that the petitioner was arrested on 16.02.2023 and subsequently he volunteered and made a confessional statement which was recorded under Section 164(1) Cr.P.C. on 08.05.2023; the petitioner has also filed Criminal Petition No.734 of 2023 expressing his willingness to turn as approver and praying for pardon and the Sessions Court granted pardon to him by the order dated 30.06.2023, and as there is no possibility of completion of trial in

near future, in the opinion of this Court, the petitioner is entitled to bail.

8. Therefore, the criminal petition is allowed granting bail to the petitioner with the following conditions:

- 1) the petitioner shall furnish a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two (2) sureties for a like sum each to the satisfaction of the learned XII Additional Chief Metropolitan Magistrate, Hyderabad,
- 2) the petitioner shall stay within 3 KMs. (three kilometres) radius of the respondent police station,
- 3) the petitioner shall not leave limits of Hyderabad City without obtaining written permission from the respondent authority,
- 4) the petitioner shall appear before the respondent police station once in a week on every Friday between 10.00 and 11.00 a.m.,
- 5) the petitioner shall make himself available for trial,
- 6) the petitioner shall not meet the accused in the crime,
- 7) the petitioner shall not intimidate or tamper with the witnesses,

- 8) the petitioner shall surrender his passport with the respondent authority, and
- 9) the respondent shall ensure that the petitioner makes a full and true disclosure as pointed in Section 306(1) of Cr.P.C. and in case if he fails to make disclosure, then the competent authority concerned shall proceed in accordance with Section 308 of Cr.P.C.

B. VIJAYSEN REDDY, J

Date: January 12, 2024.

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