

APHC010084082025



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

**[3369]**

THURSDAY, THE TWENTY SEVENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO**

**CRIMINAL PETITION NO: 1807/2025**

**Between:**

Kamma Aravind Kishore @ Kamma Aravind                      **...PETITIONER/ACCUSED**

**AND**

The State Of Andhra Pradesh                      **...RESPONDENT/COMPLAINANT**

**Counsel for the Petitioner/accused:**

1.K RAMA KOTESWARA RAO

**Counsel for the Respondent/complainant:**

1.PUBLIC PROSECUTOR

**The Court made the following ORDER:**

1. The Criminal Petition filed, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') seeking anticipatory bail, by petitioner/A6 in Cr.No.51/2025 of Tadepalligudem Town Police Station, West Godavari District registered for the offence punishable u/Section 8(c) read with 20(b)(ii)(B) of the Narcotic Drugs And Psychotropic Substances, Act, 1985 (for short 'the NDPS Act').

2. The Prosecution's case, in brief, is that on 09.02.2025, at approximately 3:00 PM, A1 and A2, both of whom were addicted to Ganja, decided to engage in the illegal trade of Ganja. They contacted A6, who was aware that Ganja was available at a low price on the Andhra-Orissa border in the

Visakhapatnam agency area. A6 provided A1 and A2 with Rs.36,000/- and instructed them to procure 12 kilograms of Ganja with the intention of selling it at a higher price. A1 and A2 went to the mentioned location, purchased the 12 kilograms of Ganja, and subsequently received instructions from A6 through Instagram. A6 directed them to deliver 2 kilograms of Ganja each to A3, A4, and A5 at the Railway Station goods shed road, 1 kilogram for both A1 and A2, and 4 kilograms to himself (A6). However, during the execution of these instructions, the police apprehended A1, A2, A3, A4, and A5. They seized a total of 13.288 kilograms of Ganja, under the cover of mediator's report. A6, however, managed to abscond and evade arrest.

**3.** Learned counsel for the petitioner contends that only on the confession of other accused, the petitioner/A6 is arrayed as A6 in the present crime and there is no proof with regard to the payment of Rs.36,000/- and the petitioner has no criminal background except the present false case. He also submits that the quantity of Ganja seized from A1 to A5 is 13.288 KGs, which falls under the definition of non-commercial quantity and prays to allow the criminal petition.

**4.** On the other hand, learned Assistant Public Prosecutor opposed to grant bail to the petitioner on the ground that he had engaged A1 and A2 to sell 12 kgs of ganja, of which, he retained 4 kgs.

**5.** I have heard both sides. Learned counsel on both sides reiterated their submissions, which are on par with the contentions presented in the petition and the report.

**6.** It is trite law that the power to grant a pre-arrest bail under Section 438 of the Cr.P.C., is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, advertent to its previous precedents, has discussed the parameters to be

considered while considering pre-arrest bail applications, in the case of **State of A.P. v. Bimal Krishna Kundu**<sup>1</sup>, has held as under:

*“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)*

*“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.” 9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187] : (SCC pp. 189-90, para 8)*

*“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”*

xxxx xxxx xxxx

*12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”*

7. The learned counsel for the petitioner/A.6 submits that the initiation of the proceedings against the petitioner was premature and the petitioner has been falsely roped in the present case merely based on the confessional statement of the A.1 to A.5; there is no incriminating material against the petitioner; the petitioner did not meddle with the investigation; the petitioner

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<sup>1</sup> (1997) 8 SCC 104

has no link with the said co-accused persons and the Investigation authorities have not collected any independent material showing the petitioner's involvement in the commission of the offence.

**8.** Learned Assistant Public Prosecutor contends that the investigation could not be completed, as the petitioner absconded; the contention that confessional statement is a weak piece of evidence cannot be taken at this stage, and in the event, the petitioner is granted pre-arrest bail, he may not cooperate with the investigation and may threaten the witnesses.

**9.** In the present case, the contraband involved consists of 13.288 kilograms of ganja, which is classified as a non-commercial quantity. The Learned Assistant Public Prosecutor asserts that, according to the confessional statements of A1 and A2, A6 informed them that ganja would be available at a reduced price at the Andhra-Orissa border in the Agency area; A6 allegedly provided them with Rs.36,000/- and instructed them to bring 12 kilograms of ganja.

**10.** It is noted that the co-accused have been arrested and they have made specific allegations against the petitioner in their confessional statements. It is relevant to note that the statements of the co-accused are to be tested at the time of trial. No reason has also been pleaded as to why the co-accused would try to falsely implicate the petitioner.

**11.** It is erroneous to say that confessional statements made by the accused during interrogation cannot be considered or looked into to connect the other co-accused. Such disclosure statement of co-accused can certainly be taken into consideration for providing a lead in the investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act.

**12.** Section 30 of the Indian Evidence Act provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved,

the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

**13.** Though the contraband seized does not constitute a commercial quantity, it is important to note that it is still several times greater than what is considered a small quantity. While it is true that no contraband was recovered from the petitioner's possession, the learned Assistant Public Prosecutor contends that A.6 is the prime accused, having encouraged A.1 and A.2 to purchase ganja from the Andhra-Orissa border in the Agency area. The petitioner claims to run a Sri Durga Dhaba in Metta upparagudem, Tadepalligudem, West Godavari District, where many customers frequently visit, some of whom use his phone to contact their relatives. However, the petitioner has not denied any acquaintance with A.1 and A.2. The investigation in this case remains incomplete, and A.6, the petitioner, has not yet been apprehended. The investigating agency still needs to gather evidence regarding the petitioner's involvement in the alleged offence. If the petitioner is granted anticipatory bail, there is a significant risk of interference with the ongoing investigation.

**14.** It is to be kept in mind that the investigation is currently at a nascent stage. The Hon'ble Apex Court, in the case of ***Tofan Singh V. State of Tamil Nadu***<sup>2</sup>, held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence. However, it is relevant to observe that the Court is considering applications under Section 438 of the Cr.P.C., for pre-arrest bail. The applicants will be entitled to the benefit of the said judgment, in the opinion of this Court, after the investigation is completed and the charge sheet is filed.

**15.** The Hon'ble Apex Court in the case of ***State of Haryana V. Samarth Kumar***<sup>3</sup>, has held as under:

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<sup>2</sup> (2021) 4 SCC 1

<sup>3</sup> 2022 SCC OnLine SC 2087

*“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.*

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*8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.*

*9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”*

**16.** It is settled law that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Cr.P.C. The Hon'ble Apex, in the case of **State V. Anil Sharma**<sup>4</sup>, has also underlined the importance of custodial interrogation as under:

*“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.*

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*8. The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same*

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<sup>4</sup> (1997) 7 SCC 187

*as for an application to release on bail after arrest. At any rate the learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses) as one which can be made against all accused persons in all cases. The apprehension was quite reasonable when considering the high position which the respondent held and in the nature of accusation relating to a period during which he held such office.”*

17. Considering the grave nature of the offence and the allegations levelled against the petitioner, this Court views that the custodial interrogation of the petitioner/A6 is required in this case for proper and just investigation of this case. However, the offence alleged to be committed is against the society, and thus, considering all the attending facts and circumstances of the case as well as the gravity of the offence, as also the settled principle of law that power of grant of bail under Section 438 Cr.P.C., is to be sparingly exercised in extraordinary circumstances, thus, the implication of the petitioner prima facie cannot be said to be without justification. Thus, no such circumstances have been made out in this case, and this Court does not find it a proper case for granting the relief of anticipatory bail to the petitioner/A.6. Therefore, without commenting on the merits of the case, lest it may prejudice the case of either of the parties, the anticipatory bail application of petitioner/A.6 is liable to be dismissed.

18. As a result, the Criminal Petition is ***dismissed***.

Miscellaneous pending applications, if any, shall stand closed.

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T. MALLIKARJUNA RAO, J

Date: 27.03.2025.

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THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

**CRIMINAL PETITION No. 1807 of 2025**

**Date: 27.03.2025**

**SAK**