

**IN THE COURT OF THE XXXIII ADDL.CITY CIVIL &
SESSIONS JUDGE & SPL. JUDGE (NDPS), BENGALURU.
CCH.33.**

PRESENT:

**SMT. B.S. JAYASHREE, LL.M.,
XXXIII ACC & SJ & SPL.JUDGE (NDPS),
BENGALURU.**

DATED: THIS THE 11th DAY OF DECEMBER 2023

Crl.Misc.No.11582/2023

**Petitioners :
(accused No.1& 2)**

1. Rakesh Kumar Mahapatra S/o
Surendra Mahapatra,
Aged 26 Years, R/at.#44/1,
4th Floor, Behind Chaudeshwari
Temple, Near New age school,
Marathhalli, Bengaluru.
Native address:Siddamahaveer
Pattanam, Pulbheri, Puri,
Odissa-752002.
2. Lakshmidhar @ Lakhna, S/o
Madhav, Aged 31 years, R/at.
#44/1. 4th floor, Behind
Chaudeshwri Temple, Near New
age School, Marathahalli,
Bengaluru-560037.
Native address:Siddamahaveer
Pattanam, Pulbheri, Puri,
Odissa-752002.

(By Sri Noorpasha, Adv.)

V/S.

Respondent :

State by Marathahalli PS

(By Public Prosecutor)

ORDER

The present petition U/Sec.439 of Cr.P.C., is filed by the petitioners to enlarge them on bail, in Cr.No.419/2023 of Marathahalli PS., registered for the offence punishable U/Sec. 8(c), 20(b) (ii) (B) of of N.D.P.S. Act.

2. The grounds urged by the petitioners for grant of bail are as under:

That the petitioners have never committed or involved in the alleged crime either directly or indirectly but they have been falsely implicated in the above case. The petitioners submit that the voluntary statements were drawn by the police at their whims and fancies to suit their case. The seizure of ganja from the possession of the petitioners is concocted to suit the purpose and these accused are implicated after the date of incident. The mandatory provisions of NDPS Act has not been complied. Though the alleged offence is non bailable, but is neither punishable with imprisonment for life or death sentence. The petitioners are ready and willing to abide by any conditions imposed by this court in the event of grant of

bail. They are ready to offer surety for their due appearance before this court. Hence, sought to grant bail.

3. The objection raised by the prosecution is that the investigating agency has seized 15 Kgs., 100 gms., of ganja from the possession of petitioners herein. The petitioners are found to be in possession of narcotic drug. A detailed mahazar is drawn in the spot. Personal search is conducted. The offence alleged against the petitioners is punishable with rigorous imprisonment for a term which shall extend upto 10 years. There is a prima-facie case available against the petitioners. They are habitual drug dealers. In the event of grant of bail, they would abscond and may hamper the investigation. Hence, sought to reject the bail plea of petitioners.

4. Heard the arguments of both sides and perused the records.

5. The points that arise for my consideration are as here under:

1. Whether petitioners have made out sufficient grounds to enlarge them on bail?
2. What order?

6. My findings on the above points are as under:

Point No.1: ***In the Affirmative***

Point No.2: *As per the final order for the following:*

REASONS

7. **POINT NO.1:-** A report submitted by PSI of Marathahalli PS., who is the complainant in this case. The contents of the report is as here under:-

On 24/11/2023 at about 11-00 AM., when the complainant was in the station he has received credible information from an informant that 2 persons who are from Odissa staying in a rented house at #44/1, 4th Floor behind Chowdeshwari Temple, Near new age school, Marathahalli, Bengaluru are in possession of contraband and are supplying it to the software employees and college students. On receipt of the information, he has informed the matter to the higher officer, obtained permission to conduct raid. He along with panchas and staff had been to the house where

the suspected contraband article was stored by the suspects. The informant had shown the house. When the IO and his team looked into the window of the house, two persons were sitting in the house speaking in Odissa language. The informant has shown the said persons as drug traffickers. Immediately they knocked at the house, showed the ID cards to them. They have also enquired about the said persons who have revealed their names as Rakesh Kumar and Lakshmidhar. On further probing they have revealed that they have transported ganja from Odissa to Bangalore in a train. The accused No.1 has shown a bag containing ganja, when the said bag was checked and weighed it was weighing 10 Kgs., when accused No.2 was questioned he has shown one bag which was kept in the house. When the said bag was opened it was containing ganja weighing 5 kgs., 100 grams. The said ganja was seized under a detail mahazar. The accused Nos.1 and 2 have revealed that they have procured ganja from their native place Ganjam district, Odissa state. They have travelled to Bangalore in the train along with the said ganja for further

sale to gain illegally. A detail mahazar was drawn. A detail report was prepared and submitted before the Station House officer. Basing on the report case in Cr.No. 419/2023 for the offence punishable under section 8(c), 20(b)(ii)(B) of NDPS Act. Thereafter accused were arrested and produced before the jurisdictional Magistrate and remanded to judicial custody. The present petitioners are accused No.1 and 2 in the case.

8. It is argued by the learned counsel for petitioners that they have planted in the case by the complainant police they are unaware of seized drug. 15 Kgs., 100 gms., of ganja is seized from the possession of the petitioners is not commercial quantity. The mandatory provisions of the Act are not complied. They are permanent residents of the address given in the cause title. In the event of grant of bail they are ready to abide by the conditions which are being imposed by this court.

9. The prosecution opposed the bail plea on the ground that the offence alleged against the petitioners is punishable upto 10 years and with fine. Ganja seized from

the possession of petitioners is intermediate quantity. In the event of grant of bail they are going to abscond and may hamper investigation.

10. On careful analysis of rival contentions and the prosecution papers available on record, the investigating agency seized 15 Kgs., 100 gms., of ganja under the seizure panchanama. The petitioners are in judicial custody since the date of their arrest i.e., from 15.09.2023. On looking to the seizure panchanama the drugs seized is weighing 15 Kgs., 100 gms., of ganja As per specification of small and commercial quantity of narcotic drug or psychotropic substance issued by Ministry of Finance Department of Revenue Notification S.O.1055(E) dated 19.10.2001 at Sl.No.55 the narcotic drug-ganja 1000 grams is small quantity and 20 Kgs., is commercial quantity. In this case the quantum of ganja seized is 15 Kgs., 100 gms., of ganja which is an intermediate quantity. As per the decision of Hon'ble Apex Court reported in **2018 11 SCC 488 Birbal Prasad Vs., State of Bihar** wherein it is held that:

Ss.37 and 20 – Bail – grant of – non commercial quantity – quantity involved being only 14 Kgs., of Opium, which is a non commercial quantity appellant accused not involved in any other case – in above circumstances, held, appellant should be released on bail, pending trial – hence, directions issued to release appellant on bail, on certain conditions.

The said case law aptly applies to the case on hand in holding that the contraband seized in the case on hand is intermediate quantity and it is not commercial quantity. In the said circumstances, as per the observations of Hon'ble Apex Court the bail plea of accused to be considered.

11. Here in this case the drugs seized by the investigating agency to the tune of 15 Kgs., 100 gms., of ganja is an intermediate quantity. When the quantity is less than commercial quantity, rigors of Sec.37 of the NDPS Act will not attract, and factors become similar to bail petitions under regular statutes normal, unless the prosecution points towards exceptional circumstances. The major portion of investigation in the case is concluded as the incriminatory article is already seized from accused persons. The offence alleged against the petitioner is not punishable with death or imprisonment for life. Further custodial interrogation is

not warranted. As per the information provided by the petitioners they are permanently residing in the address shown in the cause title. The apprehension of the prosecution that they may abscond and may protract the trial could be compensated by imposing stringent conditions. In the result, I answer the point for consideration in the affirmative.

12. **Point No.2:-** In the result, I proceed to pass following:

ORDER

The Petition filed by the petitioners U/Sec.439 of Cr.P.C is hereby allowed.

The petitioners are enlarged on bail on executing personal bond for a sum of **Rs.2,00,000/- each** with **two sureties** for the like sum with following conditions.

1. The petitioners shall give attendance before the concerned I.O., once in a month i.e., preferably on first Monday of every month in between 10.00 am., to 2.00 pm., till filing of charge sheet or further orders whichever is earlier.
2. They shall not leave the jurisdiction of this court without prior permission.
3. They shall not tamper the witness or abscond.

4. They shall co-operate with I.O for investigation.
5. They shall not commit similar offence or any offence while on bail.
6. They shall furnish their photo ID proof and photo ID proof of their sureties.
7. They shall appear before the court on all hearing dates.
8. Breach of any of the conditions by the petitioner would entail cancellation of bail.

(Dictated to the stenographer, directly on the computer, typed and computerized by her, corrected, signed and then pronounced by me in Open Court on this the 11th day of December 2023).

(B. S. JAYASHREE)
XXXIII ACC & SJ & SPL.JUDGE,
(NDPS) : BENGALURU.