

KADG010006582022



Presented on : 22-02-2022
Registered on : 22-02-2022
Decided on : 17-09-2024
Duration : --

**IN THE COURT OF
PRINCIPAL DISTRICT AND SESSIONS JUDGE
AT DAVANAGERE,**

(Presided Over by SMT. RAJESHWARI N HEGDE)

SPECIAL CASE (NDPS) NO.2/2022

COMPLAINANT:-

State of Karnataka
by PSI, CEN Crime Police Station,
Davanagere.

VERSUS

ACCUSED NO.2:-

Abdul Hashik S.M.
S/o Mohammad B.S,
Age: 30 years, Occ: Bus Booking work,
R/o B.S.Manjil Nilaya, Paichar village,
Sonamgeri post, Sulya Taluk,
Dhakshina Kannada Mangaluru Dist.

At Present r/o National Lodge,
Majestic, Bengaluru.

PP for Complainant: By Sri Manunath.B, PP, Davanagere.
Advocate for Accused No.2: By Sri Razvi Khan, Advocate.

ORDER

1. This application is filed by accused No.2 U/S.439 of Cr.P.C., praying to enlarge him on bail in Cr.No.37/2021 (Spl.Case No.2/2022) registered by the respondent-Police for the offence punishable U/S.20(b) (II)B)) of NDPS Act, 1965.

2. Learned Public Prosecutor filed the objection resisting the bail application.

3. Heard arguments of both sides.

4. Perused the records.

5. Following point do arise for my consideration;

“Whether the accused No.2 has made out grounds to grant bail to him?”

6. My findings on the aforesaid point is in the negative for the following;

REASONS

7. As per the contents of Chargesheet, the brief facts of the prosecution case are that;

On 5.7.2021 in between 2.00 p.m., and 3.30 p.m., in Thungabhadra Badavane, K.H.B.Colony, Davanagere near Kundawada village at 1st arch, from service road towards Thungabhadra Badavane, the accused No.1 & 2 are found in illegal possession of Ganja flower, leaves, seeds and buds, keeping the same in the bag, with an intention to sell the

same to the public for their wrongful gain, the accused No.1 & 2 were arrested by the police, on verification of the said bag, it is found that accused No.1 & 2 are carrying ganja illegally weighing about 11.162 Kg., worth about ₹2,84,500/-, ₹800/- cash with the accused and 45 small polythene covers and the bag, the police were seized the above said articles from the accused No.1 & 2 by drawing panchanama in the presence of panchas.

8. The accused No.2 herein has filed the present bail application stating that earlier he was enlarged on bail during the year 2022, due to absence before the court , warrant has been issued against him and now he is in judicial custody since 26.7.2024, he has stated in the bail application that he is innocent, he has not committed any offences as alleged, he is not at all concerned to the present case, he is the only earning member in his family, he is working as bus-driver in Bengaluru for his livelihood, he is having old aged parents and unmarried sisters, he is law-abiding citizen having deep roots in the society, the Investigating Officer has completed the investigation and filed the charge sheet before the court, hence, the presence of the accused No.1 is not required for custodial interrogation, he is the permanent resident of the address as shown in the cause title, he is ready to abide by all the conditions to be imposed by the court, he is ready to offer surety for his due appearance before the court, he is ready to appear before the court on all the dates of hearing, and

he will tamper or threaten the prosecution witnesses and hence, prayed for allowing the bail application.

9. The learned Public Prosecutor has filed objections to bail application contended that he denied the averments of application in toto and narrated the facts of the prosecution case in brief. He has further stated that there is prima-facie case against the accused. Investigation is completed and filed charge sheet before the Court. Earlier, the bail application of accused No.2 was allowed, and he failed to appear before the court, hence, warrant has been issued against him and now he is in judicial custody since 26.7.2024. Therefore, he filed second bail application praying for enlarging him on bail. Earlier, he has been violated the conditions of bail and he has not made out justifiable reasons to grant bail to him. Further stated that though the accused persons have knew that selling of ganja is injuries to health, they were transporting the ganja for selling the same to the public for their wrongful gain. Selling of ganja by the accused persons is anti-social activities and it is peril to the society and if he is granted with bail, there is every chance of repeating the similar offence by him. If he continued to sell ganja illegally, it caused impact on the youths and also economic system of the nation, he is said to have committed the offence as alleged under Special Act and by considering the seriousness of the offence committed by the accused persons and prayed for reject the bail application.

10. On perusal of the complaint averments, panchanama, remand applications, charge sheet and other documents, it is noticed that the total quantity of ganja seized from the accused No.1 & 2 is 11.162 Kg., worth Rs.2,84,500/-. Hence, it is a huge quantity of the ganja possessed by the accused persons for selling the same to the public for their wrongful gain.

11. Hence, prima facie, the offences punishable U/S.20(b)(ii)(B) of the NDPS Act are attracted. The maximum punishment for the offence under Section 20(b)(ii)(B) of NDPS Act is rigorous imprisonment for 10 years and shall also liable to pay fine of Rs.1,00,000/ and triable by this Court of Sessions.

12. On perusal of the records, prima-facie it reveals that the IO has completed the investigation and submitted charge sheet before the Court. Trial is not yet commenced. Prima-facie there are materials to show that the accused No.1 is involved in commission of the offences alleged and he is also in judicial custody. Earlier, the accused No.2 was granted bail to him, but he failed to keep up the conditions imposed on him and thereby violated the bail conditions and hence, warrant has been issued and the IO has arrested him now he is in judicial custody. In case, the accused No.2 is granted with bail on his subsequent bail application, there is every possibility of remaining absent before the court and hamper for completion of trial. The presence of accused

No.2 is very much required for completion of the trial. If he is released on bail, he may be abscond and caused delay for conducting the trial on one or the other reasons and moreover, he is not the resident of jurisdiction of this Court, securing his presence may be delayed for further proceedings. Under these circumstances, the apprehension of learned Public Prosecutor is that the accused No.2 will continue to do the similar act, if he is released on bail. The said apprehension of the prosecution cannot be ruled out at this stage. Under such circumstances, this Court is of the opinion that accused No.2 has not made out any grounds to release him on bail. Hence, I answer the above point in the negative, and proceed to pass the following;

ORDER

The bail application filed by the accused
No.2 U/s. 439 of Cr.P.C. is rejected.

(Typed to my dictation by Senior Sheristedar directly
on Computer, corrected, signed and then pronounced in the
Open Court on this the 17th day of September, 2024).

(RAJESHWARI N. HEGDE)
Principal District & Sessions Judge,
Davanagere.