

KADG010006582022



Presented on : 22-02-2022  
Registered on : 22-02-2022  
Decided on : 03-02-2025  
Duration: 02years,11Months,12days.

**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.

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PP for Complainant: By Sri Manunath.B, PP,  
Davanagere.

Advocate for Accused No.2: By Sri Razvi Khan,  
Advocate.  
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**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.C.NDPS.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. The brief facts of the prosecution case as per the Chargesheet 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 1<sup>st</sup> 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 has filed the bail application for the third time stating that earlier he was enlarged on bail during the year 2022, due to his absence before the court, warrant has been issued against him and now he is in judicial custody since 26.7.2024, due to ill-health he could not attend the court, his absence was not intentional, but bonafide, the offences alleged are not punishable either with death or imprisonment for life, he is innocent and he is no way concerned to the present case, he is the sole earning member in his family, the accused No.1 has been enlarged on bail by the Hon'ble High Court of Karnataka in Crl.Petn.No.9671/2024, on the ground of parity he is also entitled for grant of bail, he has no criminal antecedents, 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, his presence 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. On 05.7.2021 at about 2.00 p.m the accused No.1 and 2 were engaged in sale of Ganja to the public in the Service road leading to Tunga Bhadra Extension, Davanagere and at that time the police have conducted raid and recovered 11.162 Kilograms of Ganja from their possession. There is prima-facie case against the accused No.2. Investigation is completed and filed charge sheet before the Court. Earlier, the bail application of accused No.2 was allowed, but as he failed to appear before the court, Warrant was issued

against him, arrested and now he is in judicial custody since 26.7.2024. The 2<sup>nd</sup> bail application filed by the accused No.2 also came to be dismissed by this court on 17.09.2024. Therefore, he has filed third bail application praying for enlarging him on bail. Earlier, he has 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 knew that selling of ganja is injurious 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 an anti-social activity and it is a 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 may cause impact on the youths and also economic system of the nation, there is prima facie material against the accused for having committed the offence as alleged under Special Act, hence by considering the seriousness of the offence committed by the accused person, prayed to 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, which act of the accused prima facie attract the offence punishable U/S.20(b)(ii)(B) of the NDPS Act. 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.

11. I have gone through the Orders passed by the Hon'ble High Court of Karnataka, in CrI.Petn. No.9671/2024 date 30.9.2024, wherein the accused No.1 of this case has been enlarged on bail subject to conditions. However, the accused No.2 cannot take shelter under the said order for grant of bail. Because, in this case though the investigation is completed and charge sheet is filed, the trial is not yet commenced. Prima-facie there are materials to show that the accused No.2 is involved in commission of the offences alleged and he is also in judicial custody. Earlier, though the accused No.2 was granted bail, but he failed to keep up the conditions imposed 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, if the accused No.2 is granted with bail on his subsequent bail applications, there is every possibility of absconding and remaining absent before

the court and hamper for the fair trial. The presence of accused No.2 is very much required for completion of the trial. If he is released on bail, again he may abscond and cause 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 that the accused No.2 will continue to do the similar act if he is released on bail, 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.

( Dictated to the Stenographer Gr.1 directly on Computer, transcript corrected, signed and then pronounced in the Open Court on this the 03<sup>rd</sup> day of February, 2025).

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