

KADG010014132024



Presented on : 09-05-2024

Registered on : 09-05-2024

Decided on : 10-09-2024

Duration :

**IN THE COURT OF
PRINCIPAL DISTRICT AND SESSIONS JUDGE,
AT DAVANAGERE,
(Presided Over by SMT. RAJESHWARI N HEGDE)**

SPL.C/52/2024

COMPLAINANT:-

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

VERSUS

ACCUSED:-

Shaik Mohammad Huzaifa and others.

ACCUSED NO.5:-

Sharuk Ali S/o Yakob Sab,
Age: 28 years,
R/o 2nd Main, 6th Cross,
KTJ Nagara, Davanagere.

PP for Complainant: By Sri Manunath.B, PP, Davanagere.
Advocate for Accused No.5: By Sri Chandrashekar.T.H.,
Advocate.

ORDER

1. This application is filed by accused No.5 U/S.439 of Cr.P.C., praying to enlarge him on bail in Cr.No.35/2024 (Spl.Case No.52/2024) 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.5 has made out grounds to grant bail to him?”

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

REASONS

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

That on 10.3.2024 at about 5.00 p.m., to 6.40 p.m., the accused No.1 Shaik Mohammad Huzafa has illegal possession of ganja and the same was stored in the shop situated at Southern Tyres, Bilal Compound, Davanagere city for his wrongful gain weighing 3.49 Kg., worth about ₹2,40,000/- without obtaining valid licence or permit from the

competent authority, the complainant has conducted raid at the spot and the same was seized by the complainant along with his staff and panchas by drawing panchanama in the presence of panchas. During the investigation, it is noticed that accused No.2 has supplied the ganja to accused No.1 for sale, said accused No.1 was used to sell the ganja to the public through accused No.3 to 5. Hence, the complainant has filed the charge sheet against accused No.1 to 5.

8. The accused No.5 herein has filed the present bail application stating that he has been in judicial custody since 26.8.2024, he is innocent and he has not committed any of the alleged offence, he is the only earning member in his family having deep roots in the society, the Investigating Officer has already completed the investigation and filed the charge sheet before the court and hence, he is not required for custodial interrogation, the accused No.5 is the only seller of ganja and the IO has not recovered any property from him, the co-accused No.3 was granted anticipatory bail by the Hon'ble High Court of Karnataka in CrI.Petition No.4192/2024, he is suffering from resolving hemorrhagic contusion of cumulative size 28*14 mm is seen in the left temporal lobe, he is permanent resident of the address as shown in the cause title having moveable and immoveable properties, 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 earlier the bail application filed by this accused was rejected by this court in Crl.Misc.263/2024, the accused No.2 and others are still absconding, and there is prima-facie material against this accused in commission of the alleged offence, Investigation is completed and filed charge sheet before the Court. Further stated that though the accused persons have knew that selling of ganja is injuries to health, they were having illegal possession and 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. Learned counsel for the accused No.5 has relied upon the order passed by Hon'ble High Court of Karnataka at Bengaluru in Criminal Petition No.3506/2024 dated 16.5.2024 between Shaik Mohammed Hujeeef V/s. State of Karnataka (Accused No.1 in the present case).

11. He has relied upon the order passed by Hon'ble High Court of Karnataka at Bengaluru in Criminal Petition No.4192/2024 dated 12.6.2024 between Ajjaiah.B.P. V/s. State of Karnataka (Accused No.3 in the present case).

12. On perusal of the records, it reveals that after completion of the investigation, the Investigating Officer has filed the chargesheet against the accused No.1 to 5 in the present case and there are prima-facie materials against the accused No.5 in commission of the alleged offences. He is in judicial custody since 25/8/2024.

13. The learned counsel for the accused No.5 submitted that he is not involved in commission of the alleged offences, he is innocent and law abiding citizen, the IO has already submitted the charge sheet and the custodial interrogation of the accused No.5 is not required and he is permanent resident of the address as mentioned in the cause title having moveable and immoveable properties, he is ready to abide by all the conditions to be imposed by the court. The learned counsel for the accused No.5 has relied upon the order passed by the Hon'ble High Court of

Karnataka, Bengaluru as stated above and prayed for grant bail to accused No.5.

14. Taking into consideration of the facts and circumstances of the case and the arguments submitted by both sides and the orders relied upon by the learned counsel for the accused No.5, this Court has considered the fact that as the Investigating Officer has completed the investigation and submitted the charge sheet before the court and the presence of the accused No.5 is not required for custodial interrogation and as the accused No.1 & 3 are already granted anticipatory bail by the Hon'ble High Court of Karnataka. This accused is in judicial custody since 25.8.2024.

15. In view of the facts and circumstances of the case, the alleged offences are not punishable with death sentence nor life imprisonment. The accused No.5 is the permanent resident of the address mentioned in the cause title and his presence can be secured during the investigation and trial. The apprehension of the learned Public Prosecutor can be resolved by imposing stringent conditions. Under such circumstances, this Court is of the opinion that the accused No.5 is entitled for bail. Accordingly, the above point is answered in the affirmative, and proceed to pass the following;

O R D E R

The bail petition filed by the accused No.5 U/s. 439 of Cr.P.C. is allowed.

The accused No.5 is ordered to be released on bail in this case (Cr.No.35/2024 of CEN P.S., Davanagere) registered for the offences punishable U/S. 20(b)(ii)(B) of NDPS Act, on executing their Personal Bond in a sum of ₹2,00,000/- (Rupees Two Lakh only) along with one surety for the like sum to the satisfaction of the concerned court on the following conditions:-

1. The accused No.5 shall appear before the IO within fifteen days from the date of this order and in that event, IO to take bonds and to release him on bail.
2. He shall not give threat to the prosecution witnesses in any manner.
3. He shall not leave the jurisdiction of this Court without prior permission till disposal of matter.
4. He shall not indulge in similar type of offence in the future.

5. He shall be present before the Court on all the dates of hearing without fail.

If the accused No.5 violates any of the conditions, the prosecution is at liberty to seek cancellation of bail.

(Typed to my dictation by Senior Sheristedar, after his typing, corrected, signed and then pronounced by me in the open Court this the 10th day of September, 2024.)

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

Davanagere.