

**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS  
COURT AND SPECIAL JUDGE (NDPS), AT: DAVANAGERE**

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Present :

**Smt. Geetha K.B.,** *M.A., LL.B.,*  
Principal District & Sessions Judge and  
Special Judge (NDPS),  
Davanagere.

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Dated this the 11<sup>th</sup> day of January, 2021.

**SPECIAL (NDPS) CASE NO.9/2020**

**Complainant:-**

State of Karnataka represented through  
PSI, Rural Police Station, Harihara.

**-VERSUS-**

**Accused No.2:-**

Mallikarjuna @ Mallu S/o. Swam,  
aged about 25 years, Driver work,  
R/o.1<sup>st</sup> cross, Behind Water Tank,  
Jyothi Nagara, Shivamogga.

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Learned Public Prosecutor for complainant  
Sri Santhosh B.R.- Advocate for accused No.2

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**O R D E R**

1. The learned counsel for the accused No.2 has filed this petition U/S.439 of Cr.P.C., on behalf of the accused No.2 praying for regular bail for the offences punishable U/S.20(b) of Narcotic Drugs and Psychotropic Substances

Act, 1985 (in short "NDPS Act") registered in Harihara Rural P.S. Crime No.136/2020.

2. The case of accused No.2 in nutshell is that the complainant police have registered the case against him for the offence U/S.20(b) of NDPS Act and arrested him on 12/09/2020, produced before this Court. It is further stated that the accused No.2 is innocent of the offence alleged against him; he has not committed any of offence and there is no nexus between alleged commission of guilt with that of the accused No.2, though he has been falsely implicated in this case. The accused No.2 is the permanent resident of Shivamogga and he is the driver by profession and he is the only earning member of his family. It is further stated that the complainant police have submitted the charge sheet before this Court after completion of investigation. The accused No.1 was granted with bail by the Hon'ble High Court of Karnataka in Crl.P.No.6646/2020 dated 04/12/2020 and on the ground of parity, this accused No.2 is also entitled for regular bail. The alleged offence is non bailable in nature and

exclusively triable by this Court. Accused No.2 is ready to offer surety for his due presence before the Court; he will not abscond from proceedings and will not tamper with prosecution witnesses, if he is released on bail. The accused No.2 is ready and willing to abide by the conditions that may be imposed by the Court. Hence, prayed for allowing the bail application.

3. The learned Public Prosecutor has filed objections. In the objection statement, he denied the averments of bail 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 No.2; the investigation is completed and charge sheet is filed before this Court. He has further stated that the accused No.2 was arrested at the spot and seized Ganja along with auto in which the Ganja was being transported. He has further stated that if the accused No.2 is released on bail, there is every chance of he committing similar offences; threatening and tampering with prosecution

witnesses and there is every chance of his abscondance.

Hence, prayed for rejection of bail application.

4. Heard arguments of both sides.

5. From the above facts, the points that arise for consideration are as follows:

1. Whether the accused No.2 is entitled for regular bail?

2. What order?

6. The findings of this Court on the above points are as under:

1. In the **affirmative**;

2. As per final order for the following:

### **REASONS**

7. **Point No.1:-** The complainant police have registered the case based on the *suo moto* complaint lodged by Shivaprasad M., CPI, Harihara Circle on 12/09/2020 at 12.00 noon in Crime No.136/2020 and after completion of investigation, the IO has submitted the charge sheet before this Court.

8. The case of prosecution in nutshell is that on 12/09/2020 at 12.00 noon, C.W.1 has received credible information that in front of the Bharani Hotel situated by the side of Harihara-Shivamogga State Highway which passes through Hanagawadi village, the accused No.1 to 3 were in possession of ganja keeping the same in the passenger auto bearing Reg.No.KA-14/B-8176 for the purpose of illegal sale; after receipt of such information, C.W.1 along with his staff, C.W.4- Gazetted Officer, C.W.2 & 3- panch witnesses went to the spot at 1.00 p.m., and raided the spot; arrested the accused persons and also seized the ganja which was kept in the bags and plastic covers weighing 4 kilo 170 grams worth Rs.1,25,000/- in presence of panch witnesses.

9. On perusal of the contents of charge sheet prima facie, it appears that the offence U/S. 20(b) of NDPS Act is committed.

10. The allegation against the accused No.2 is that, he along with accused No.1 & 3 were transporting the ganja in the Bajaj Auto Rickshaw bearing Reg.No.KA-14/B-8176,

which is more than small quantity but less than commercial quantity. Hence, prima facie it reveals the offences punishable under Section 20(b)(ii)(B) of NDPS Act. The maximum punishment for the offence under Section 20(b)(ii)(B) of NDPS Act is 10 years and shall also liable to pay fine of Rs.1,00,000/ and triable by this Court of Sessions. The accused No.2 is in custody since 12/09/2020 i.e., since about 4 months.

11. The learned Public Prosecutor in the arguments submitted that the prima-facie it is established that the accused No.2 along with accused No.1 & 3 have possessed and transported the ganja worth Rs.1,25,100/- in the auto rickshaw for the purpose of sale. Hence, if this accused No.2 is released on bail, there is every chance of he again committing the similar offence which affects the entire society.

12. The learned Counsel for the accused No.2 submitted that the ganja which was alleged to be seized from the possession of accused No.2 is not commercial quantity and the mandatory provisions of NDPS Act are not

followed and the panchanamas reveal that the buds, stem, leaves, flowers everything together was weighed and the IO has stated the total weight of the seized article is 4.170 kilograms. However, this is not properly done. Further he submitted his arguments that the accused No.1 was already granted with regular bail by the Hon'ble High Court of Karnataka in Crl.P.No.6646/2020 dated 04/12/2020, hence on the ground of parity, this accused No.2 is also entitled for bail.

13. In this regard, the learned Counsel for the accused No.2 relied upon the unreported order passed by Hon'ble High Court of Karnataka in **Criminal Petition No.200439/2020 dated 22/07/2020** between **Sateesh and State of Karnataka, through Sindagi Excise Range Police Station**, wherein their Lordship held as follows:-

“In the instant case, the alleged ganja said to have been recovered from the possession of petitioner is having quantity of 5 Kgs. Admittedly, as per the Notification specifying small quantity and commercial quantity issued by the Central Government in exercise of power conferred under Sec.

2 of the NDPS Act, the contraband article is not to be categorized as commercial quantity of ganja, which is recovered. Prima facie it is revealed a medieval quantity of the ganja is recovered. As per Section 37 of the NDPS Act which can be made applicable for the purpose of considering the bail petition which is applicable, strictly bail should not be granted except on two conditions, but it is for the offences involved commercial quantity of ganja and for other offences stated therein. Now, the prosecution has been given an opportunity to put forth its submission upon the bail petition. Further petitioner is in custody since 15/10/2019 i.e., more than 9 months. Now the investigating officer has filed the charge sheet and prima facie which shows that the presence of the petitioner may not be required further for the purpose of investigation. If at all, his presence is required for further investigation, in that regard if conditions are imposed that would meet the apprehension of the prosecution.”

14. The learned Counsel for the accused No.2 relied upon another unreported order passed by Hon'ble High Court of Karnataka in **Criminal Petition No.5753/2020 dated 18/11/2020** between **Vazeer Khan and two ors.,**



**and the State of Karnataka by Chintamani Police**

**Station,** wherein their Lordship held as follows:-

“On perusal of the records, it indicates that already accused No.1 has been released on bail by Prl. District & Sessions Judge, Chikkaballapur in Crime No.102/2020 by order date 09/11/2020. On perusal of the records, it indicates that when a raiding party entered into the house and a bag was there in the kitchen and on verification of the said bag, it was containing 3.900 kgs., of ganja and admittedly, accused No.1 is in conscious possession of the said house and no physical possession was there with reference to accused Nos.2 & 3. Even the investigating agency has not segregated the seeds, buds, flowering tops and stems in order to give a proper weight so as to come to the conclusion that whether it is a small quantity or commercial quantity and the alleged offences are punishable with imprisonment for 3 to 7 years and it is also not punishable with death or imprisonment for life.”

15. In the first of the above decisions, it is held that there the seized ganja in that case is 5 Kgs.; prima facie it revealed that medieval quantity of the ganja is recovered

and the investigating officer has filed the charge sheet after completion of investigation. In the instant case also, the seized ganja in this case is 4 kilo 170 grams which is not a commercial quantity and in this case also, the investigating officer has filed the charge sheet before this Court. Hence, the above said decision is aptly applicable to the case on hand.

16. In the second of the above decisions, the petitioners/accused of the above said cases were released on bail as the accused No.1 has been released by the Sessions Court and there was no segregation of seeds, buds, flowering tops and stems to know the actual quantity seized; in the instant case also, the accused No.1 was already granted with bail by the Hon'ble High Court of Karnataka and the IO has not segregated the seized seeds, buds, flowering tops and stems to know the actual quantity of seized ganja from the possession of accused No.2. Hence, the said decision is also aptly applicable to the case on hand.

17. The apprehension expressed by learned Public Prosecutor in his objections could be safeguarded by imposing stringent conditions on accused No.2. Hence, this Court holds that the accused No.2 is entitled for bail with some stringent conditions. Accordingly, point No.1 is answered in the **affirmative**.

18. **Point No.2:-** In view of findings on point No.1, this Court proceeds to pass the following:-

### **O R D E R**

The bail application filed U/S.439 of Cr.P.C., on behalf of accused No.2 is hereby allowed.

Accused No.2 is released on bail on he executing self bond for a sum of Rs.2,00,000/- with two sureties for like sum subject to following conditions:-

1. Accused No.2 shall not threaten or tamper with prosecution witnesses directly or indirectly.

2. He shall not involve in similar offences of any other case, if he gets involved

in any other case, the prosecution may apply for cancellation of bail.

3. He shall appear before the Court on all hearing dates without fail till conclusion of trial.

(Dictated to the Judgement Writer, transcript revised, corrected, signed and then pronounced in the open Court on this the 11<sup>th</sup> day of January, 2021)

**(Geetha K.B.)**

Prl. District & Sessions Judge  
and Special Judge (NDPS),  
Davanagere.

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