

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

DATED THIS THE 6TH DAY OF JANUARY, 2022.

PRESENT

Smt. RAJESHWARI N. HEGDE., B.Com.,LL.B., (Spl.),
Principal District & Sessions Judge,
Davanagere.

SPECIAL CASE (NDPS) NO.10/2021

Complainant:- State by Police Sub-Inspector,
Nyamathi Police Station,

(By Learned Public Prosecutor,
Davanagere)

V/S.

Accused:-

1. Dharigesha Naik S/o Papanaiik @
Babya Naik, Age: 19 years,
Occ: Coolie work, R/o Hosajoga
Village, Nyamathi Taluk,
Davanagere District.
2. Lohitanaik S/o Pooryanaik @
Papyanaik, Age: 19 years,
Occ: Coolie work, R/o Hosajoga
Village, Nyamathi Taluk,
Davanagere District.
3. Nagaraja @ Roshan S/o Ravinaik @
Doodyanaik, Age: 20 years, Occ:
Coolie Work, R/o Holebenavalli
village, Shivamogga Taluk &
District.

4. Darshan S/o Raghavendra, Age: 18 years, Occ: Coolie work, R/o Hosajoga village, Nyamathi Taluk.

(By Sri. MSMK - Advocate)

O R D E R

1. This application is filed U/S.439 of Cr.P.C., praying to enlarge them on bail in Cr.No.129/2021 (Spl.Case No.10/2021) registered by the respondent-Police for the offence punishable U/S.8B, 8(c), 20(a) & 20(b) of NDPS Act, 1985.

2. Learned Public Prosecutor filed the objection resisting the petition.

3. Heard arguments of both sides.

4. Perused the records.

5. Following point do arise for my consideration;

“Whether the accused No.1 to 4 have made out grounds to grant regular bail to them?”

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

R E A S O N S

7. Brief facts of the case is that;

Complainant - Devaraj.T.V., CPI has lodged a complaint on 27.7.2021 alleging that at about 1.00 p.m., he received credible information that accused No.1 & 2 along with their friends were possessing ganja. Immediately, he apprehended accused No.1 & 2 and seized 43 grams of ganja from the possession of accused persons. On enquiry, accused No.1 has informed that the same was purchased from accused No.5. Accordingly, accused No.1 took Gazetted officer and panchas to the land bearing Re.Sy.No.39/2, where accused No.5 along with others were residing, in the backyard of the house of the accused No.5 they had grown nine ganja plants, they removed the said plants, separated the leaves, stem and root, weighing about 5 Kgs 80 grams and seized the same by drawing panchanama. Thereafter, the police apprehended the accused No.1 to 3 and seized the ganja leaves. Further, based on the voluntary statement of accused No.1, the accused No.5 has been implicated in the commission of the alleged offence by cultivating the ganja leaves behind his house. Hence, the complaint.

8. Based on the said complaint, the PSI of respondent police has registered the case in Cr.No.129/2021 for the offence punishable U/S.20(b) of NDPS Act. Thereafter, the Investigation Officer has

completed the investigation and filed the charge sheet against the accused No.1 to 5.

9. The accused No.1 to 4 herein were arrested by the police on 28.7.2021, since then they are in judicial custody. They seek bail on the ground that they are innocents, they have not committed any offences as alleged, they are law-abiding citizens, they hail from respectable family having deep roots in the society, they are the only earning members in their family, the accused No.5 in this case has granted anticipatory bail by the Hon'ble High Court of Karnataka, Bengaluru in Crl.Petition No.7406/2021. The offences alleged against the accused persons neither punishable with death sentence nor life imprisonment, they are ready to abide by any conditions that may be imposed by the Court, they are ready to furnish surety to the satisfaction of the Court, they will not tamper or threaten the prosecution witnesses. Hence, prayed for enlarge them on regular bail.

10. 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. Further stated that though the accused persons have knew that selling of ganja is injuries to health, they were selling ganja 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 they are granted with bail, there is every chance of repeating the similar offence by them. If they continued to sell ganja illegally, it caused impact on the youths and also economic system of the nation, they said to have committed the offences as alleged under Special Act and by considering the seriousness of the offences committed by the accused persons and prayed for reject the bail application.

11. On perusal of the charge sheet and its enclosures it reveals that the Investigating Officer has apprehended the accused persons, seized material objects from the possession of the accused No.1 to 4 under panchanama and they are in judicial custody since 28.7.2021. Earlier, the accused No.1 to 4 approached this Court for grant of regular bail and the same was rejected by this Court on 13.8.2021. Thereafter, accused No.5 of this case has obtained anticipatory bail by the Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.7406/2021 dated 26.10.2021. Thereafter, the accused No.1 to 4 again moved the present bail application U/s.439 Cr.P.C., to grant regular bail after filing the charge sheet by the

Investigating Officer. Considering the changed circumstances and on perusal of the charge sheet and its enclosures this Court has considered the fact that the seized quantity is not the commercial quantity and investigation of the case is completed by the Investigating Officer and custodial interrogation of the accused No.1 to 4 is not required. However, in view of the facts and circumstances of the case, the alleged offences are not punishable with death sentence nor life imprisonment. Moreover, the accused No.5 of this case has obtained anticipatory bail by the Hon'ble High Court of Bengaluru. The accused No.1 to 4 are the permanent residents of the address mentioned in the cause title and their presence can be secured during the trial. The apprehension of the learned Public Prosecutor could be safeguarded by imposing stringent conditions. Under such circumstances, this Court is of the opinion that the accused No.1 to 4 are entitled for regular bail. Accordingly, the above point is answered in the affirmative, and proceed to pass the following;

ORDER

The bail petition filed by the accused No.1 to 4 U/s. 439 of Cr.P.C. is allowed.

The accused No.1 to 4 are ordered to be released on bail in Cr.No.129/2021 registered by the respondent-Police for the offences

punishable U/S.8(a), 8(c), 20(a) & 20(b) of NDPS Act on executing their personal bond in a sum of Rs.1,00,000/- (Rupees One lakh only) along with two sureties for the like sum to the satisfaction of this Court on the following conditions:

1. The accused No.1 to 4 shall not hold out threats to the prosecution witnesses or lure them in any manner.
2. They shall not involve in any criminal activities.
3. Themselves and their sureties shall furnish their identity proof.
4. They shall not leave the jurisdiction without prior permission of the jurisdictional police.

If the accused No.1 to 4 violates any of the conditions, the prosecution is at liberty to seek cancellation of bail.

(Typed to my dictation by Judgment Writer directly on Computer, corrected, signed and then pronounced by me in the Open Court on this the 6th day of January, 2022).

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