

IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, D.K., MANGALURU

Present

Sri Ravindra M. Joshi, M.A., LL.B. (Spl.),
Principal District and Sessions Judge,
D.K., Mangaluru.

Dated, this the 11th day of August, 2023.

Special Case No.80/2023

Complainant :

The State, through the Inspector of
Police, Kankanady Town Police Station,
Represented by
Public Prosecutor,
Mangaluru, D.K.

/ Versus /

Accused :

Mr. Jubair Ahamed Tahir,
Aged 42 years,
S/o Abubakker Siddique,
R/at KGN Apartment,
1st Floor, Kaikamba,
Uppala, Kasargod,
Kerala-671322.

(By Sri Rajesh K. Amtady, Advocate.)

ORDER

The accused has filed this application under Section 439 of Criminal Procedure Code praying to grant regular bail to him in this case.

2. The learned Public Prosecutor filed objections to the application along with report of Investigating Officer.

3. Heard on both sides.

4. Perused the contents of the application, objection and other materials. The points that arisen for consideration of this Court are:

1) Whether the accused has made out justifiable and reasonable grounds for allowing the application?

2) What Order?

5. The above points are answered for the reasons, findings given in the foregoing paragraphs as:

Point No.1: In Affirmative,

Point No.2: As per final order.

REASONS

6. **Point No.1**: The SHO Kankanady Police Station has registered Crime No.126/2022 for the offences punishable under Section 8(c), 21(c) of NDPS Act on the basis of complaint filed by the PSI, CCB, Mangaluru against accused Nos.1 to 3. It is case of the prosecution that on 22.12.2022 the PSI, CCB received credible information that 2 persons were coming on motor cycle bearing Reg. No. KA19J4514 from Uppala towards Indiana Hospital, Pumpwell for selling MDMA drug to public. Immediately the PSI brought the said information to the notice of his higher officers and obtained authorization for conducting the raid, secured panchas and proceeded towards Pumpwell and started watching. Around 1.15 p.m. found 2 persons standing

on the side of motor bike bearing Reg. No. KA19J4514 near under construction building of Nirmal Tyres on Ujjodi road. Immediately they surrounded them. However, among 2 persons one managed to ran away and another catch hold by them. On inquiry with catch hold accused he disclosed his identity as Jubair Ahamed Thahir S/o Aboobakker Sabuddin and ran away accused is his friend Sheik Mohammed Riyaz of Nayabazar Uppala. Further, on inquiry he disclosed that himself and Sheik Mohammed Riyaz purchased 20 gram MDMA from one Mohin @ Nonna Sohail @ Mohammed Suhail and have sold 8 gram and brought remaining 12 gram MDMA for sale in Mangaluru. After ascertaining that he possessed contraband MDMA, the PSI seized the motor cycle under mahazar and issued

notice to the accused under Section 50 of NDPS Act. Thereafter, took the accused to the Gazetted Officer. On search being made, it is found 8 packets containing 1 gram each, 2 packets containing 2 gram each of white coloured crystal MDMA, mobile, cash of Rs.1,000/-, 20 small plastic packets, digital scale. The PSI seized all the articles under mahazar and prepared a report and submitted to the SHO Kankanady Police Station. The Investigating Officer produced the accused before the Court and remanded to judicial custody. The accused is in judicial custody since then.

7. The accused contended that he is innocent of the offences and has been falsely implicated in this case. There is no reasonable grounds to believe that the accused has committed the alleged offences. The police

have not complied section 50 of NDPS Act. The police weighed alleged contraband along with plastic cover which shows it is 12 grams. It is not proper and correct. The contraband seized is not having commercial quantity, hence, section 37 of NDPS Act is not applicable. The CCB Police illegally detained the accused from 20.12.2022 and have fixed up the case by creating false story. The petitioner hails from respectable family and is the only bread earning member in the family. The accused is not required for custodial interrogation. The offences alleged are not punishable with death or life imprisonment. He is ready and willing to abide by the conditions that may be imposed on him. Therefore, prayed for grant of bail.

8. The Public Prosecutor opposed the bail application contending that the police have registered Crime No.126/2022 on the basis of raid and seizure of contraband and other articles from the possession of the accused. The police have seized contraband, mobile and other materials from the possession of the accused. The investigation of the case is in progress. Another accused is absconding. If the accused is granted bail, there are chances of absconding, coming in the way of investigation, flee from justice. Therefore, at this stage it is not proper to grant bail to the accused. Hence, prayed for rejecting the bail.

9. On going through the materials on record it reveals that on 20.12.2022 the PSI CCB on the credible information proceeded near Indiana Hospital,

Pumpwell and arrested the accused Jubair Ahammed Thahir and seized 12 gram of MDMA, plastic packets, digital scale, motor cycle, cash. In this case, the police after seizure of contraband have sent sample of it for chemical examination. The FSL report reveals that the sample sent have responded positive for Methamphetamine. As per the schedule, the quantity of contraband seized is inter-mediatory one. The rigor of section 37(1)(b)(ii) of NDPS Act will not applicable. The accused is in custody since 22.12.2022. The police have completed the investigation and submitted charge sheet. Further detention of accused in custody is not necessary, except for the purpose of trial. The accused contended that he is ready and willing to abide by the conditions that may be imposed on him. The

apprehension of prosecution regarding absconding, coming in the way of trial, tampering of witnesses can be safeguarded by imposing conditions. On considering the facts and circumstances of the case, this Court finds that it is just and reasonable to grant bail to the accused. Hence, for these reasons, this Court answered Point No.1 in the Affirmative.

10. **Point No.2:** In the result, this Court proceeds to pass the following:

ORDER

The application filed under Section 439 of Criminal Procedure Code by accused, is allowed.

The accused is ordered to be released on bail on execution of personal bond for Rs.1,00,000/- with one surety for likesum.

The accused shall not hold any threat or lure the prosecution witnesses in any manner.

The accused shall appear before the Court regularly.

The accused shall not leave the jurisdiction of this Court or change the place of residence, pending disposal of the case, without prior permission from the Court.

The accused shall produce address proof document such as, Voters ID, Aadhaar Card pertaining to him and surety at the time of executing the bail.

(Typed by the Judgment Writer to the dictation, corrected, signed and then pronounced by me in the Open Court on this the **11th day of August, 2023.**)

(Ravindra M. Joshi)

Prl. District & Sessions Judge,
D.K., Mangaluru.