

In the Court of Principal District and 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 **3rd day of July, 2024.**

Spl.C./67/2024

Complainant: State of Karnataka,
by Konaje Police Station,
represented by Public Prosecutor,
D.K., Mangaluru.

(By Public Prosecutor)

Versus

Accused No.1: Abdul Aziz,
aged 42 years,
S/o Late Ibrahim,
R/at No.2-258, Ramla Manzil,
Thoudugoli Cross, Naringana Post,
Ullal, Mangaluru, D.K. District.

(Sri Venu Kumar, Advocate)

ORDER

This is second bail petition of accused Abdul Aziz filed under Sec. 439 of Criminal Procedure Code praying for grant of regular bail. The first bail petition came to be rejected as per order dated 05.04.2024.

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, First Information Report, complaint, objections, charge sheet 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 the Affirmative,

Point No.2 : As per final order.

REASONS

6. **Point No.1:** On 20.10.2023 the PSI, CCB, Mangaluru received information of possessing and sale of contraband MDMA by accused Mohammed Azeez and coming for sale of it to the Fiza Mall ground, opposite to K.S. Hegde Hospital in a car bearing reg. No. KA-19-ME-6639. Immediately by obtaining permission from higher officer and by securing panchas

proceeded to the spot around 3.10 pm and found informed car in the ground and conducted raid. Further, he catch-hold the accused and on inquiry came to know about purchase of the contraband along with one Hafeez @ Abhi at Bengaluru from a Nigerian lady. The PSI by securing Gazetted Officer, conducted search of person of accused and found 26 gram of white colour MDMA crystal, two mobiles. Further, on search of the car found digital scale, 90 empty zip cover packets. Thereafter, seized all the articles under mahazar and handed over the accused with seized articles to Konaje Police. The SHO, Konaje Police Station has registered FIR in Crime No.89/2023 for the offences punishable under Sec. 8(c), 21, 21(c) of NDPS Act and produced the accused before the Court.

7. The accused by maintaining the petition contended that he is innocent and he has been falsely implicated in this case. The police have not followed the provisions of Sec. 42, 50 of NDPS Act. The police have effected seizure, hence, further detention of the accused in custody is not necessary. There is no reasonable grounds to believe commission of offence by him. The bail petition of the accused came to be rejected earlier holding that the investigation of the case is in progress. Now the investigation is completed and charge sheet has been filed. Therefore, the further detention of accused in custody is not required. The offence alleged is not punishable with life or death penalty. The accused is not having any criminal antecedent. The accused claims that he is resident of Mangaluru. The

accused is ready to abide by the conditions that may be imposed on him. Hence, prayed for grant of bail.

8. The Public Prosecutor opposed the bail application contending that on 20.10.2023 the CCB Police on credible information about sale of contraband MDMA by this accused in a car near Fiza Mall ground, conducted raid and arrested the accused and seized 26 gram of MDMA, mobiles, digital scale, empty plastic covers. During inquiry this accused revealed that himself and accused Hafeez @ Abhi have purchased the contraband from a Nigerian National lady at Bengaluru. There are reasonable grounds to believe commission of the offence by the accused. The contraband seized is having commercial quantity. Hence, Sec. 37 of NDPS Act is applicable. The offence

alleged is punishable with imprisonment of 10 years and more. If the accused is granted bail, there are chances of absconding, coming in the way of trial, 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 the on 20.10.2023 the CCB Police on credible information of possessing of contraband by the accused Mohammed Azeez coming towards Fiza Mall ground, opposite to K.S. Hegde Hospital, Deralakatte, conducted raid and arrested the accused around 3.15 pm and seized 26 gram of MDMA, 2 mobiles, 90 plastic empty packets and car bearing reg. No. KA-19-ME-6639 and handed over to jurisdictional police who have

registered FIR in Crime No.89/2023 for offence under Sec. 8(c), 21, 21(c) of NDPS Act and produced the accused before the Court. During investigation another accused Hafeez @ Abhi also arrested and produced before the Court.

10. In this case the police seized contraband stated to be MDMA crystal of 26 gram. The IO submitted charge sheet and also produced FSL report. On perusal of the report, it reveals that the sample taken out of seized contraband during inventory proceedings has been sent for chemical examination, which responded for Methamphetamine. As per Central Government notification 50 gram and above of Methamphetamine is commercial quantity. The seized contraband comes within intermediary quantity.

Therefore, the rigor of Sec.37(1)(ii)(b) of NDPS Act is not applicable. As earlier stated the accused is in custody since 20.10.2023. Already charge sheet has been filed. The accused is not required for further investigation or interrogation and his presence for the purpose of framing charge, trial can be secured by imposing conditions. The accused is residing within the limits of this court and is ready to abide by the conditions that may be imposed on him. Therefore, on considering all these circumstances of the case, this Court holds that the accused is entitled for bail. Hence, for these reasons, this Court answered Point No.1 in the *Affirmative*.

11. **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 the 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 like-sum.

The accused shall not threat, tamper the prosecution witnesses.

The accused shall not leave the jurisdiction of the Court or change his residence pending disposal of the case without prior permission of the Court.

The accused shall appear before the Court regularly on all hearing dates without fail.

The accused shall furnish residential
proof such as Voter ID, Aadhaar card, DL etc.

(Typed by the Stenographer Grade-II to the dictation, the
transcript corrected and signed by me and then pronounced in
the open court on this the 3rd day of July, 2024.)

(Ravindra M. Joshi)
Principal District & Sessions Judge,
D.K., Mangaluru.