

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 **15th day of April, 2024.**

Spl.C./208/2023

Complainant: The State,
by Ullala Police Station,
represented by Public Prosecutor,
D.K., Mangaluru.

(By Public Prosecutor)

Versus

Accused No.2: Mr. Mohammed Askar,
aged about 26 years,
S/o late Ummer,
R/at Morathana House,
Kasaragod District, Kerala.

(Sri Shiva Prasad A., Advocate)

ORDER

Accused No.2 has filed application under Section 439 of Criminal Procedure Code praying for grant of regular bail.

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

Point No.2 : As per final order.

REASONS

6. **Point No.1:** On 09.01.2023 the morning the PSI of Ullal P.S. while on petrolling duty received information about two persons coming on motor cycle from Devipura towards Talapady by possessing ganja for the purpose of sale. Immediately by informing it to the higher officers and by securing panchas proceeded near Tuchany and found a two wheeler coming on the road by hanging plastic cover to the handle. The PSI asked the rider to stop it. However the rider try to take

the motor cycle on the reverse side and meanwhile the pillion rider manage to ran away and rider has been catch hold. On enquiry the rider the revealed his name and also name of pillion rider. Further he disclosed about possessing and keeping the ganja in the plastic cover. There after the PSI verified the plastic cover and found 4 kg of ganja unit. Thereafter the PSI seized the ganja under mahazar and took the accused along with seized contraband ganja to the police station and handed over to the SHO. The SHO, Ullal P.S. has registered FIR in Crime No.1/2023 for the offence punishable u/Sec.8(c), 20(b)(ii)(B) of NDPS Act against both accused and produced arrested accused before the court. After completion of the investigation submitted charge sheet showing accused No.2 as absconding. On verifying the investigation papers and other materials,

cognizance has been taken and registered Spl. Case No.208/2023. The accused Mohammed Rajik (A1) has been granted default bail by this Court on 11.04.2023. This Court has issued NBW against Accused No.2 and the police have produced the accused before the Court on 08.02.2024. Since then he is in judicial custody.

7. The accused contended that he is innocent and he has been falsely implicated in the case. He has not committed any offence. The allegation made in the complaint are false. The alleged offence is not punishable with life and death penalty. As the police have submitted charge sheet the accused is not required for further detention for investigation purpose. The contraband seized is intermediary quantity, hence provisions of section 37 of NDPS Act is not

applicable. He is ready to abide by the conditions that may be imposed on him. Hence, prayed to grant bail.

8. On the other hand, the Public Prosecutor opposed the bail application contending that there is no justifiable or reasonable grounds for grant of bail to the accused. On the day of incident this accused manage to escape and accused no.1 has been arrested and contraband of 4kg ganja has been seized. During investigation it is found that this accused is also involved in the commission of offence. This accused has been arrested on 11.05.2023 and produced before the court. If the accused is granted bail, there are chances of absconding, tampering of witnesses and coming in the way of trial. Therefore, prayed for rejecting the bail application.

9. On going through the material on record it reveals that on 09.01.2023 in the morning on credible information about carrying contraband ganja on motor cycle by two persons from Devipura towards Tuchani the PSI along with Panchas and Staff, conducted raid and catch hold accused no.1. The accused No.2 manage to ran away from the spot. The PSI seized 4kg of contraband ganja and handed over to the SHO, who has registered FIR and produced accused no.1 before the court. Meanwhile accused no.2 has been arrested on 11.05.2023 and produce before the court. The accused is in judicial custody since then.

10. In this case accused no.1 has been granted bail u/Sec.167(2) of Cr.P.C. After completion the I.O has submitted charge sheet. The contraband seized is 4 kg

of ganja which is intermediary quantity. Therefore the rigor of section 37 of NDPS Act is not applicable. The investigation of the case has been completed. The accused is not required for custodial interrogation or further investigation. No purpose will be served in keeping the accused in custody. The presence of the accused can be secured by imposing conditions. The apprehension of prosecution about absconding, tampering of witnesses, coming in the way of trial, can be safeguarded by imposing conditions. Therefore, on considering the circumstances of the case, this Court finds 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 accused no.2 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 appear before the Court regularly on all hearing dates without fail.

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.

(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 15th day of April, 2024.)

(Ravindra M. Joshi)

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