

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 **8th day of August, 2022.**

Special Case No.15/2021

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

(By learned Public Prosecutor)

Versus

Accused Aboobaker Misba @ Misba,
No.1: S/o Ismail,
 R/at Kattathale,
 near Meharaj Masjid,
 Margathale Ullal Oalgina Pete,
 Mangaluru.

(By B. Arun Bangera, Advocate)

ORDER

This application is filed under Section 439 of
Criminal Procedure Code (Cr.P.C.) praying for grant of

regular bail in connection with the case, by Accused No.1 – Aboobaker Misba @ Misba.

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

3. Heard on both sides.

4. Perused the contents of the application, First Information Report (FIR), complaint, charge sheet, 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 the Affirmative,

Point No.2 : As per final order.

REASONS

6. **Point No.1:** The Police Inspector Economic and Narcotic Crime Police Station submitted charge sheet alleging commission of offence punishable under Section 21, 21(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) against Accused Nos.1

to 3. It is alleged that on 19.07.2019 on the basis of information received from Assistant Sub-Inspector of Police, Crime Special Squad of Mangaluru North Sub-Division, Station House Officer Panambur Police Station registered Crime No.62/2019 for the offences under Section 21, 21(c) of NDPS Act and the Police Inspector Panambur Police Station along with his staff catch hold the accused around 11.35 a.m. near wear house building Meenakalia, Baikampady and seized 7.45 milligram of mephedrone from Accused No.1, 4.60 milligram of mephedrone from Accused No.2, 4.40 milligram of mephedrone from Accused No.3 and mobiles, cash, vehicle from the possession of accused. The Accused Nos.1 to 3 arrested and produced before the Court.

7. During the investigation, the Accused Nos.1 to 3 were granted regular bail. As the Accused No.1 fails to appear before the Court. Hence, bail has been canceled and accused has been taken to custody and he is in judicial custody.

8. The Accused No.1 contended that he is innocent of the offences and has not committed any of the offence. The police have falsely implicated him in

this case. Due to the death of his father and he was suffering from illness on several times, he could not appear before the Court. The offences alleged are not punishable with death or imprisonment for life. The accused contended that he is not required for custodial interrogation. He is ready and willing to abide by the conditions that may be imposed on him.

9. The prosecution opposed the bail contending that the offences alleged against the accused are cognizable and non-bailable offences. The accused has been granted regular bail during crime stage. However, the accused jumped the bail condition and remained absent. If the accused is granted bail, there are chances of absconding, coming in the way of trial and committing of similar offences. Therefore, prayed for rejecting the bail application.

10. On perusal of the records, it reveals that the police have charge sheeted Accused Nos.1 to 3 for the offences punishable under Section 21, 21(b) of NDPS Act. The accused were arrested and produced before the Court. The Accused No.1 has been granted regular bail during investigation stage on 07.09.2019. The accused after granting bail fails to appear before the Court. The

process for securing accused by issuing summons, NBW went in vain. Hence, bail has been canceled. The accused has been taken to judicial custody on 13.06.2022. Since then he is in judicial custody. The Investigating Officer has submitted charge sheet after completion of investigation. The accused is not required for further investigation or custodial interrogation. The bail has been canceled for the reason of not appearing before the Court by the accused. The accused contended that he is ready and willing to abide by the conditions that may be imposed on him. The Public Prosecutor contended that already the accused has violated the bail condition. Therefore, he is not entitled for bail. If bail is granted, there are chances of absconding and coming in the way of trial. On considering the circumstances of the case, this Court finds that keeping the accused in custody will not serve the purpose. The presence of accused can be secured during trial by imposing stringent condition. Therefore, this Court finds that instead of keeping the accused in custody it is just and proper to release on bail, since the accused has been granted bail after considering the seriousness and gravity of the offence. Therefore, 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 by the accused – Aboobaker Misba (A1) under Section 439 of Criminal Procedure Code is allowed.

Accused No.1 is ordered to be released on bail on execution of personal bond for Rs.1,00,000/- with one surety for like-sum, on the following conditions:

- 1) The accused shall not threat, tamper the prosecution witnesses.
- 2) The accused shall not leave the jurisdiction of this Court without prior permission.
- 3) The accused shall mark his attendance on every Second Saturday of each calendar month till conclusion of the trial.
- 4) The accused shall appear before the Court on all hearing dates and co-operate with further proceeding of the case.

(Typed by the Judgment Writer to the dictation, the transcript corrected and signed by me and then pronounced in the open court on this the 8th day of August, 2022.)

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