

KADW010006332023



**THE COURT OF PRL. DISTRICT & SESSIONS JUDGE  
DHARWAD.**

**DATED THIS THE 22<sup>nd</sup> DAY OF MAY, 2023.**

**PRESENT**  
**SMT. K.G. SHANTHI,**  
**B.COM., LL.M.**  
**PRL. DISTRICT & SESSIONS JUDGE, DHARWAD.**

**Spl. NDPS CC No. 8/2023**

**COMPLAINANT:**

State by Sub Urban Police Station, Hubballi.  
(By Public Prosecutor, Dharwad.)

V/s

**ACCUSED:**

1. Anant Vamanrao Thavare  
Age 45 years,  
R/o. Swami Samartha Nagar, Paranda  
Dist: Usmanabad State: Maharashtra
2. Naganath s/o Bapu Gaikwad.  
Age 42 years.  
R/o. Vayukuleplot, Baarasi  
Dist: Solhapur, State: Maharashtra

(By Sri. S.N.Bendigeri, Advocate)

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**ORDERS ON THE APPLICATION FILED U/S.37 OF  
NDPS ACT R/W SEC. 439 OF CR.P.C.**

Accused No.1 and 2 have filed an application U/Sec. 37 of NDPS Act R/w Section 439 of Cr.P.C. praying to grant regular bail to them in this case.

2. The Sub Urban Police, Hubballi registered the case against two unknown persons in Crime No. 178/2022 for the offences punishable U/Sections 20(b)(ii)(A) of NDPS Act R/w Section 34 of IPC. During the course of investigation, the police have arrested the accused, seized ganja from their possession and produced before the Court and they were remanded to judicial custody. Thereafter, the police have completed investigation and filed charge sheet against accused No.1 and 2 for the offences punishable U/Sections 20(b) (ii) (B) of NDPS Act R/w Section 34 of IPC. Now Accused No.1 and 2 who are in judicial custody have filed bail application seeking for regular bail.

3. Accused No.1 and 2 contended that they are innocents, they have not committed any offence and they have

been falsely implicated in the case. The alleged offences are not punishable with death or imprisonment for life. It is also contended that seizure panchanama has not been drawn as per the provisions of NDPS Act. It is submitted there are no prima facie materials to believe that accused have committed the alleged offence. It is contended that the Police have already completed investigation and filed charge sheet against the accused, so their custodial interrogation is not necessary. Further, the accused are in J.C since 04.12.2022. It is stated that the accused are the only earning members in their family and if they are continued in custody, then their family members would be forced to starvation. It is stated that accused are ready to abide by any conditions imposed by the Court and ready to furnish surety to the satisfaction of the Court. Accordingly, pray for grant of bail.

4. The learned Public Prosecutor filed objections to the bail application contending that the alleged offence is against the society, which cause loss to the Government exchequer. It is stated that the alleged offence is punishable up to 10 years imprisonment and fine up to Rs.1,00,000/-. There are prima

facie materials to show the involvement of accused in the alleged crime. It is also stated that the accused are the residents of Maharashtra and if they are released on bail, they will abscond, tamper the witnesses of prosecution and there is every chance of causing hurdle for the trial. If the accused are released on bail, they may repeat the same offence by selling the ganja to the youngsters and thereby spoil their life. With these reasons, the learned Public Prosecutor prayed for rejection of bail application of A.1 and 2.

5. Arguments heard.

6. The points arose for my consideration :-

1) Whether accused No.1 & 2 are entitled for bail?

2) What order?

7. My findings to the above points are as under;

Point No.1:- In the Affirmative.

Point No.2:- As per final order, for the following:

#### **REASONS**

8. **Point No.1**:- Initially, the Sub Urban Police, Hubballi registered the case against unknown persons for the offences punishable under section 20(b)(ii)(A) of NDPS Act. After concluding investigation, the police have filed charge sheet

against the accused for the offences punishable U/S. 20(b)(ii) (B) of NDPS Act. As per the charge sheet, on 04.12.2022 at about 10.30 am., on a public place near Chatnimath Cross at Hubballi, accused No.1 and 2 were illegally transporting 15 kg 646 grams of Ganja in a Car bearing No. MH-01/CA-6935 for the purpose of sale for their illegal gain and the same were seized by the police. Hence, accused No.1 and 2 have committed the offences punishable U/Sec. 20(b)(ii)(B) of NDPS Act.

9. It is the definite contention of the accused that they are innocents and they have not committed any offence. According to the prosecution, on receiving the credible information, the police have went to the spot along with panchas and other police officials and stopped the car of accused and arrested them. On enquiry, the accused told that they were transporting Ganja. Accordingly, the police have seized ganja in the car of accused. They also seized the Car, cash, mobile etc., from the possession of accused. In this regard, mahazar has been drawn by the police.

10. The learned Advocate for the accused submits that the police have not drawn the mahazar as per the provisions of NDPS Act. He also submitted that since the date of arrest, the accused are in judicial custody. Now investigation has been completed and charge sheet has been filed, hence custodial interrogation of the accused is not necessary. It is also contended that the father of accused No.2 is suffering from cancer and he was hospitalized. In this regard, he has produced medical documents. Further argued that the accused are the only earning members in their family and if they are continued in custody, then their family members would be forced to starvation. Therefore, they may be enlarged on bail.

11. According to the prosecution, the accused are the resident of Maharashtra, so there is every chance of absconding. In my opinion, merely because the accused are the residents of Maharashtra, it cannot be said that they are not entitled for bail. Any way, in this case, investigation has been completed and accused are in J.C since more than five months. The custodial interrogation of the accused is not required as investigation has been completed. Further, there is

no material placed by the prosecution to show that accused are having criminal antecedents and they involved in similar acts. The apprehension of the prosecution is that if the accused are released on bail, there is every chance of their absconding and thereby cause hurdle for the trial. In my opinion, it is just and reasonable to direct the accused persons to furnish cash security of Rs.50,000/- each. On deposit, the same shall be kept in any Nationalized Bank and after conclusion of the trial, the same may be refunded to the accused. By considering the facts and circumstances, I am of the opinion that it is just and proper to grant bail to the accused by imposing stringent conditions in order to meet out the apprehensions of prosecution. Accordingly, I answer point No.1 in the affirmative.

12. **Point No.2:-** For the reasons stated above, I proceed to pass the following:-

### **ORDER**

**Bail application filed by accused No.1 and 2 U/Sec. 37 of NDPS Act R/w Section 439 of Cr.P.C., is hereby allowed, subject to following conditions.**

- 1) Accused No.1 and 2 shall be released on bail by executing their personal bond for a sum of Rs.1,00,000/- each with two sureties for the likesum**

to the satisfaction of the Court (i.e. one surety from the local and another surety from the native place of the accused)

2) They shall not hamper/tamper the prosecution witnesses directly or indirectly.

3) They shall not indulge in similar offences.

4) They shall appear before the Court on all the dates of hearing.

5) They shall furnish cash security of Rs.50,000/- each.

*(Dictated to the judgment writer directly on computer system, print out corrected and then pronounced by me in the open-Court on this 22<sup>nd</sup> day of May, 2023).*

**(K.G. SHANTHI)**  
**PRL.DISTRICT & SESSIONS JUDGE,**  
**DHARWAD.**