

IN THE COURT OF THE PRL.SSESSIONS & SPL. JUDGE,
DHARWAD.

DATED THIS THE 7th DAY OF JANUARY, 2021

PRESENT:
SRI. UMESH M. ADIGA,
B.COM., LL.B (SPL.)
PRL. SESSIONS & SPL. JUDGE, DHARWAD.

Spl.NDPS.CC.NO.7/2020

COMPLAINANT:-

The State
(Through Hubli Sub Urban PS),
By Spl. Public Prosecutor, Dharwad.

V/s

ACCUSED:-

1. Maruti S/o Kallappa Haranasikari,
Age: 21 years, Occ: Coolie,
R/o Timmapur Tq & Dist: Gadag.

3. Abdulrazak S/o Mohammadsab Kasabag,
Age: 42 years Occ: Business,
R/o Sakaf Roza Karadi colony,
Dt: Vijapur.

(By Sri.T.R.Patil – Adv., for A.1)

(By Sri.V.G.Holeyannavar Adv., for A.3)

ORDER

Accused no.1 & 3 have filed bail applications under Section 439 of Cr.P.C. r/w Section 37 of NDPS Act, for grant of bail in crime No.66/2019 of Hubballi sub urban P.S., registered for the offence punishable U/s 20(b)(ii)(B) of NDPS Act, on following grounds: .

That accused are innocents and have not committed the alleged offences. The alleged offences are not punishable with death or imprisonment for life and triable by this court. They have been in Judicial custody since 2-9-2020 and 15-9-2020 respectively. Due to their detention in J.C., their family members are undergoing immense sufferings. They are respectable persons in the society. They have no any criminal antecedents. Accused No.1 is shepherd and having movable and immovable property in his native place. Accused NO.3 is heart patient and he needs treatment. Now investigation is completed and IO filed charge sheet against the accused in this case. They are also sole bread earners of their families. They are permanent residents of the addresses given in the petition and are having deep roots in the society. They are ready and willing to abide by any conditions imposed by this court and also offer surety to the satisfaction of the court. Hence, prayed to grant bail.

2. The learned Public Prosecutor filed objections to the applications contending that there are sufficient materials to believe that accused have committed alleged offences. 4 kgs. 50 grams of ganja were seized from accused no.1 and 2 and 1 kg. 49 grams of ganja was seized from accused no.3. The present accused and accused No.2 are habitual offenders. If they are released on bail, there is every chance that they will continue to purchase ganja from others and sell the same in and around Hubli – Dharwad. If bail is granted, it will encourage accused to continue to involve in said crime and it will give wrong signal to the society. Right thinking people of the society may have bad opinion about the courts. If the I.O., filed charge sheet against the accused, is not a ground to grant bail to the accused. Accused may not appear before the court if bail is granted. With these reasons, the learned Public Prosecutor prayed to reject the application.

3. I have heard the arguments.

4. The following points emerge for my determination:-

1. Whether accused no.1 & 3 are entitled for bail?

2. What Order?"

5. My findings on the above points are as under:-

Point no.1:- In the Affirmative.

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

REASONS

6.**POINT NO.1:-** On 2/9/2020 Police Inspector of Hubli - Sub Urban Police Station got credible information that two persons were coming towards Desai Circle in Hubli in a motor cycle and they were transporting ganja. Said information was received at 3.15 p.m. On receipt of information, Police Inspector informed this message to his superior officers. He secured presence of his subordinates, gazetted officer and also collected weighing machine to weigh ganja, if offenders are apprehended. With all this, at about 5.30 p.m., the said team went near Desai circle, Hubli. Police officers of the said team went to different places such as Deshpande nagar, Pinto Circle etc. At about 5.50 p.m., two persons were coming from Pinto circle towards Deshpande nagar, in motor cycle. One of the rider of the motor cycle was having a bag and they kept one bag on the patrol tank of the motor cycle. Looking to the said persons, Police Inspector suspected that they might be the persons against whom, he got credible information and they might be transporting ganja. Police Inspector

gave signal to rider of the motor cycle. Looking to the police, rider of the motor cycle tried to take turn with an intention to escape and fled away from the spot. However, police were able to stop them and caught hold both of them.

7. It is further case of the prosecution that on enquiry, both riders of the motor cycle disclosed their names and address. On further enquiry, they revealed that they were carrying ganja for sale in and around Hubli. On search of the bag, held by accused no.1 and 2, they found 2 kgs. 31 grams and 2 kgs. 20 grams from possession of accused No.1 and 1049 grams from the possession of Accused No.2. Police Inspector searched both accused in the presence of gazetted officer and found cash as well as mobile phone. On enquiry, accused no.1 and 2 confessed before Police Inspector that they used to purchase ganja from a person, who was coming from Shishunal. They do not know his name and address. Police Inspector seized said ganja under the mahazar, in the presence of witnesses. Thereafter, went to police station and gave report about search and seizure of ganja and apprehension of accused no.1 and 2. On the basis of said report, the SHO of Hubli Sub Urban Police Station registered a case in

Crime No.66/2020 for the offence punishable under Section 20(b)(ii) (B) of NDPS Act.

8. On further interrogation of accused no.1, he confessed that he used to purchase ganja from one Abdul Razak, resident of Gaddinakeri cross in Bagalkot district. The Investigating officer tried to collect information about said Abdul Rajak. On 15/9/2020, the Investigating Officer got credible information that on that day, accused no.3 Abul Rajak was likely to go to Gaddankeri cross for sale of ganja. Police Inspector, secured presence of witnesses, gazetted officer and also secured weighing machine. All of them went to Gaddanakeri cross of Bagalkot district, watching near Simikeri Kavamma temple situated by the side of Hubli-Solapur main road. At about 12.40 noon, the Investigating Officer found a Wokswagon car was coming from side of Gaddankeri cross. It was registered in State of Maharashtra. Police Inspector, along with his subordinates was able to stop the vehicle. Driver of the car immediately, after stopping of the vehicle, tried to run away from the spot. However, he was apprehended by the police. On enquiry, he disclosed his name and address. He is accused no.3 of this case. On search of the car, the Police Inspector found 1 kg. 10 grams of ganja, cash of Rs.1,500/- and mobile phone.

Police Inspector seized all the said articles under mahazar, arrested driver of the said vehicle, who is accused no.3 of this case and took him to Police Station. Accused no.1 to 3 were produced before Special Court on the dates of their respective arrest and they were remanded to JC.

9. The investigating officer submitted charge sheet against the accused No.1 to 3 and it is registered as Spl.NDPS CC No. 7/2020. Thereafter, this application is filed on the ground of changed circumstances, from the date, on which bail application filed by same accused was rejected by this court. The said contention is accepted.

10. As per the case of the prosecution 4 Kg 51 grams of Ganja was seized from accused No.1 and 1,049 grams of Ganja was seized from accused No.3. The quantity of the ganja seized is above the minimum quantity and less than commercial quantity. Therefore, the ganja seized from the possession of accused No.1 and 3 is medium quantity. Investigation is already completed and charge sheet is filed. Keeping of the accused in custody at this juncture during the course of trial, is not required. Accused undertakes to abide by the conditions and also appear before the court whenever so directed; They will not tamper prosecution witnesses and evidence. They also contends that

they will offer sureties to the satisfaction of the court. In view of the said undertakings, by imposing conditions bail can be granted.

11. It is true that, major quantity of Ganja was seized from accused No.1 and from accused No.3 about 1049 grams of Ganja was seized. Accused No.2 is already released on bail. Trial of this case may take some more time. The apprehension of the prosecution can be met with by imposing conditions and taking sureties to the satisfaction of the court. Under these circumstances, granting bail to the accused No.1 and 3 are just and proper.

For the aforesaid discussion, 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 applications filed by the accused No.1 & 3 U/s 439 of Cr.P.C., & Section 37 of NDPS Act, are allowed.

Accused No.1 & 3 are ordered to be released on bail, on execution of personal bond for Rs.1,00,000/- by each with two sureties for like sum amount to the satisfaction of the court, out of them one should be their nearest relative and the surety should indicate in his

affidavits about his relationship with accused No.1 & 3, with following conditions:

- 1) That they shall not try to tamper prosecution witnesses and evidence.
- 2) They shall regularly attend before the court on all the dates of hearing unless their presence is dispensed with on any particular date.
- 3) They should not involve any criminal activities including offence of this nature.
- 4) They shall regularly attend complainant police station on every second Saturday between 10-00 AM to 2-00 PM and mark their attendance till conclusion of the trial.
- 5) If accused No.1 & 3 commits breach of any of the conditions stated above, then their bail will be cancelled.

[Dictated to Stenographer, transcribed & computerized by him, print out corrected and then pronounced by me in the open court on this the 7th day of January 2021]

(Umesh M.Adiga),
Prl.District & Sessions Judge,
Dharwad.