

KAUP010006232025



IN THE COURT OF THE PRINCIPAL DISTRICT &
SESSIONS JUDGE, UDUPI AT UDUPI.

PRESENT

Sri K.S. Gangannavar, B.Com., LLB., (Spl.)
Principal District & Sessions Judge, Udupi

Dated this 13th day of May, 2025

SPECIAL CASE No.29/2025

Complainant : The State through
PSI, Udupi Town Police Station, Udupi.
(By Learned Spl. Public Prosecutor, Udupi)

/Vs/

Accused Nagaraja, S/o Mallesh,
Aged about 25 years,
R/at Muttikal, Kolalgiri Post,
Upporu Village, Brahmavara taluk,
Udupi District.
(By Sri Mithra Kumar Shetty, Advocate)

ORDER ON APPLICATION FILED U/SEC.483 OF
BNSS, 2023

Accused facing allegations for the offences
punishable u/ss. 22(b), 8(c), 20(b)(ii)(A) of Narcotic
Drugs and Psychotropic Substances Act 1985 in Crime
No.1/2025 of Udupi Town Police Station, has filed this
application.

2. According to complainant – Police Sub Inspector, on 03.01.2025 at about 11.15 a.m., he received a credible information about possession and sale of MDMA Powder and Charas by a scooterist at Beedinagudde of Shivalli Village in Udupi Taluk. Immediately, he appraised his superiors about the information and obtained their permission to conduct raid. They secured Gazetted Officer and independent witnesses for personal search and panchanama at the time of intended raid. He reached the spot at 12.50p.m., and observed a scooterist in a public place by the side of L.V.Temple road. Upon conducting raid, rider of the scooter tried to escape, but, he was caught and questioned. At that time, he disclosed his name as Nagaraj (Applicant) and conceded that, he is taking MDMA Powder and Charas in his scooter for the purpose of sale and he has no permit for the same. He further disclosed that he purchased the Narcotic Drugs from one Akbar of Katapadi and he intends to sell the same to the students at Manipal and other general public to earn money. Complainant got the applicant

personally searched through Gazetted Officer obtaining his consent. On that occasion, applicant found to be in possession of MDMA powder weighing 49 grams and 46 milligrams worth Rs.2,50,000/- and 3 grams 86 milligram weighing Charas worth Rs.3,500/-. His Realme ui mobile hand set was worth Rs.20,000/- with Airtel SIM No.7760609003 and Redmi Mobile worth Rs.2,000/- were also seized along with scooter bearing Regn.No.KA.51,AB.7901 worth Rs.50,000/-.

3. The report was placed with SHO and Investigating Officer continued the investigation and as on the date of considering this application, Investigating Officer had prepared charge sheet.

4. Investigating Officer claims for making out prima facie case for the trial.

5. Accused applicant on the other hand, has contended that the allegations made in the said complaint against him are totally false. He has not committed any offence and he is fixed in this case by the complainant only for the statistics of the

complainant, accused has been made a scape goat. He is not involved in any of the offences whatsoever alleged in the complaint. There are no reasonable grounds on record to hold that the accused is guilty of any offence punishable with death or imprisonment for life.

6. The custodial detention and interrogation of the accused is not required in the facts and circumstances of the case. The detention of the accused is also not required for the purpose of any recovery. He will cooperate with the investigation of the Town P.S., Udupi.

7. If the accused is detained, then he will suffer hardship, loss, insult and humiliation. He is having name and fame in the society and he is also having deep roots in the society. He is willing to cooperate with the Investigating Officer and undertakes to furnish acceptable surety to ensure his availability by the concerned and ready to abide by the terms and conditions that may be imposed by this Court.

8. He is a sole bread earner of the family, having old aged parents to look after. He has no criminal antecedents. Hence, prayed to allow the application.

9. Learned Public Prosecutor filed objections with the I.O. Report, wherein allegations of complaint, materials of investigation are also relied upon. It is further contended that the accused is in habit of dealing in Narcotic Drugs. In this regard, Crime No.152/2020 is registered in Brahmavara Police Station. Further, Crime No.179/2020 is registered for offence under Section 143, 147, 148, 341, 324, 427, 435, 504 and 506 r/w 149 of IPC and PDLA Act and Section 3(2)(iii), 3(2), 5-A of SC/ST (POA) Act. Applicant is involved in supply of drugs to college students and youth. If released on bail, petitioner is likely to abscond, it will encourage him to repeat the offence. Hence, sought to reject the application.

10. Heard both sides. Perused the materials.

11. Point that arise for consideration is:

“Does the applicant make out sufficient ground to release on bail?”

12. Above point is answered in the negative for the following:

REASONS

13. Accused is allegedly found in possession of 49.46 miligrams of MDMA and 3 grams of charas. It is primarily contended that accused has been fixed for the false allegations. Investigating Officer has claimed for approaching the accused on the basis of credible information. Until the accused was caught, and questioned, even the address of the accused were not within the knowledge of the Investigating Officer. Therefore, definite materials for falsely implicating or fixing the accused are to be disclosed by the accused himself. There are no explanations to that effect.

14. Accused deny alleged possession of the narcotic drug. Presumption of innocence cannot be denied in any allegations. However, the prohibition of statute to possess certain things or articles cannot be overlooked. Such prohibition by the statute cast

positive duty on the accused not to possess them. Therefore, allegedly carrying the narcotic drug has to be appreciated, at this stage, on the basis of reasonable available defence. Specific reason of falsely implicating the accused cannot be presumed without certain materials.

15. Quantum of narcotic drug allegedly found in possession of the accused has to be considered under the Act and its classifications. Not all narcotic drugs are classified on the basis of same quantity of being small, intermediary and commercial quantity. These classifications holds significance because of the punishment provided therein. Under these circumstances, different quantity of definite narcotic drug by itself to be punished differently.

16. In other words, it is the extent and nature of psycho active symptoms of a drug is capable of developing determines small, intermediary or commercial quantity. In other words, stronger or longer the duration of psycho active influence, lesser the quantity provided for being smaller, intermediary or

commercial. Therefore, considering the said quantity of narcotic substance for the classification, peculiarity of the substance can be appreciated.

17. Two grams of MDMA is found to be small quantity. Therefore, even milligrams of said substance carry greater significance. Under these circumstances, quantum of 49 grams and 46 milligrams of MDMA allegedly possessed by single individual, carry greater weight and significance. Under these circumstances, both presumption of innocence and allegations of being fixed by the Investigating Officer needs to be considered in a detailed manner.

18. It is needless to say that because of the prohibition of the narcotic substance, dealt in this case is not an ordinary commodity of abundant availability. Higher the quantity of narcotic substance, longer is the period of punishment provided. At this stage, Investigating Officer has completed the investigation and filed charge sheet. Therefore, there are definite materials to believe the commission of the offence by

the accused. Hence, at this stage, it is found not proper to release the accused on bail.

19. Accordingly, above point is answered in the negative and pass the following:

ORDER

The application U/Section.483 of BNSS filed by applicant/accused is hereby rejected.

(Dictated to the Stenographer Grade-I, transcript revised/corrected, then pronounced in the open court on 13th day of May, 2025)

(K.S. Gangannavar)
Principal District & Sessions Judge
Udupi.