

KAUP010013952023



IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE & P.O.,
SPECIAL COURT, AT UDUPI

PRESENT:- Sri. Shantaveer Shivappa
B.A., LL.B., (Spl.)

Principal District & Sessions Judge
Udupi

Dated this 15th day of February, 2024

Spl.Case.No.47/2023

Complainant The State-
By PSI, CEN Police Station, Udupi

(By learned Public Prosecutor, Udupi)

/Vs/

Accused No.2 Nithish,
S/o Shankar Kundar,
Aged about 25 years,
R/at 15-14,
Near Kallamata,
Kodavooru village,
Thenkanidiyoor,
Udupi District.

(By Sri C.L.D, Advocate)

ORDER ON BAIL APPLICATION FILED UNDER SECTION 439 OF Cr.P.C. BY THE ACCUSED No.2

The brief facts of the case are as under:

The Accused No.2 is charge sheeted for the offence punishable under Section 8(c), 20(b)(ii)(B) of NDPS Act in CEN Police Station Crime No.64/2023. Accused No.2 was not secured by the IO during investigation. As such charge sheet was filed showing the Accused No.2 as absconding. After taking cognizance and registering the case, NBW was issued against the Accused No.2. Now the Accused No.2 is produced before the Court on execution of NBW and remanded to Judicial Custody.

2. The Accused No.2 contends that he has not committed the offences as alleged, he is innocent. But, the State has initiated false prosecution against him only on the basis of voluntary statement of Accused No.1. It is further contended that the Accused No.2 is permanent resident of the address as shown in the cause title of the petition. The Accused No.2 is the only bread earning member in the family having the responsibility of taking care of his old aged parents and other dependents. If the Accused No.2 is

further detained in Judicial Custody, his personal liberty will be curtailed and his dependents would be put to hardship. As such, the Accused No.2 is before this Court with this petition seeking to enlarge him on regular bail.

3. Further, the Accused No.2 is ready to abide by any conditions that may be imposed by the Court for his bail. The Accused No.2 is ready to furnish surety to the satisfaction of the Court for his bail. The Accused No.2 is ready to appear before the Court and Investigating Officer whenever required. The Accused No.2 is ready to attend the Court on each and every date of hearing. The Accused No.2 is ready to assist the Court in early disposal of the case and prays to allow the petition.

4. To this, the learned Public Prosecutor filed objections contending that the petition is not maintainable either in law or on facts. The brief case of the prosecution is that on receipt of credible information the Investigating Officer on 13.04.2023 apprehended the Accused No.1 at about 1:50 p.m. near Kalmat temple in Kodavooru Village of Udupi Taluk and recovered ganja weighing 1 Kilo 82 Grams along with mobile, cash Rs.2,700/- and handbag. Thereafter

necessary prosecution came to be initiated on behalf of the State to CEN Police Station Crime No.64/2023 for the offences punishable U/Sec.8(c), 20(b)(ii)(B) of NDPS Act and investigation is taken up.

5. It is further contended that on conclusion of the investigation charge-sheet came to be filed against the Accused No.1 and 2. This Accused No.2 is arrayed on the basis of voluntary statement of Accused No.1 that he was the supplier of seized ganja. As the Investigating Officer was not able to procure Accused No.2 at the investigation stage he was shown as absconding. Now if the Accused No.2 is enlarged on regular bail, there is every possibility of tampering with or destruction of prosecution evidence and threatening of prosecution witnesses. If the Accused No.2 is enlarged on regular bail, there is every possibility of absconding fear for the law leading to hampering of the trial. If the Accused No.2 is enlarged on regular bail, there is every possibility of recurrence of such offences in future. The Accused No.2 has not urged any valid grounds to enlarge him on

regular bail. As such, the Accused No.2 is not entitled to be enlarged on bail and prays to reject the petition.

6. Heard both the sides and perused the records.

7. The points that arise for the consideration of the court are as under:

- 1) Whether the Accused No.2 is entitled to be enlarged on regular bail at this stage?
- 2) What order?

8. The findings of the court on the above points are as under:

- 1) In the Affirmative
- 2) For the reasons discussed as under:-

REASONS

9. **Point No.1:-** The learned Advocate for the Accused No.2 and the learned Public Prosecutor for the State had argued as per their application and objection.

10. A perusal of the records goes to show that the Accused No.2 had made out a case that he is permanent resident of the address as shown in the cause title of the

petition, owning immovable properties. The Accused No.2 had made out a case that he is the only bread earning member in the family having the responsibility of taking care of his old aged parents and other dependents. Further, the Accused No.2 is in Judicial Custody since from the date of his arrest. As such, his personal liberty is curtailed and his dependents are put to hardship.

11. Further, the Accused No.2 had made out a case that he is ready to abide any conditions that may be imposed by this court for his bail. The Accused No.2 is ready to furnish surety to the satisfaction of this Court. The Accused No.2 is ready to appear before the Court on each and every date of hearing. The Accused No.2 is ready to assist the Court in early disposal of the case. Considering the same, the possibility of absconding by the Accused No.2 seems to be remote.

12. Further this Court is of the opinion that though the offences alleged against the Accused No.2 are non-bailable, but the same are not punishable with death or imprisonment for life and triable by this Court. Further

this Court is of the opinion that in this case already the investigation is concluded and charge-sheet is filed. The presence of the Accused No.2 is no more required for the purpose of investigation. As such, no useful purpose would be served by further detaining the Accused No.2 in Judicial Custody. For the reasons discussed as above, Accused No.2 is entitled to be enlarged on regular bail as sought.

13. As regards to the apprehensions of the learned Public Prosecutor regarding absconding, hampering of the trial, tampering with or destruction of prosecution evidence, or threatening of the prosecution witnesses can be overcome by imposing suitable stringent conditions on the bail of the Accused No.2. For the reasons discussed as above, Point No.1 is answered in the Affirmative.

14. **Point No.2**:- For the reasons discussed as above, the following:

ORDER

The petition filed U/Sec.439 of Cr.P.C. by the Accused No.2 is hereby

allowed.

The Accused No.2 is ordered to be enlarged on bail on execution of personal bond for ₹1,00,000/- with two sureties for like sum on following:

CONDITIONS:

1. The Accused No.2 shall attend the Court on each and every date of hearing without fail.
2. The Accused No.2 shall not make any efforts of tampering with or destruction of prosecution evidence.
3. The Accused No.2 shall not make any efforts of threatening of prosecution witnesses.
4. The Accused No.2 shall appear before the Court and the Investigating Officer whenever required.
5. The Accused No.2 shall assist the Court in early disposal of the case.

If any of these conditions
are violated the prosecution is at
liberty to seek for cancellation of
the bail.

(Dictated to the Stenographer Grade-I transcribed
/computerized by him, corrected by me and then
pronounced in the open court this on 15th day of February,
2024)

(Shantaveer Shivappa)
Principal District & Sessions Judge,
Udupi.