

IN THE COURT OF THE SESSIONS JUDGE AT YADGIRI

Present:- Sri. S. SRIDHARA,

B.Sc., LL.B.,
District and Sessions Judge,
Y A D G I R I.

Spl.Case No.110 of 2020

Dated this the 11th day of January, 2021

COMPLAINANT:-

THE STATE OF KARNATAKA
BY KEMBHAVI POLICE STATION.
(BY PUBLIC PROSECUTOR)

- VERSUS -

PETITIONER/ACCUSED:-

SHANKAR SING S/O BABU SING HAJERE, AGE: 40 YEARS, OCC: AGRICULTURE,
R/O MUDANOOR (B) VILLAGE, TQ. HUNASAGI, DIST. YADGIRI.
(BY SRI. S.S.KAMATAGI, ADVOCATE)

ORDER ON BAIL APPLICATION FILED BY ACCUSED U/SEC. 439 OF CR.P.C.

This bail application is filed by the petitioner/accused under Section 439 of Cr.P.C. praying this Court to allow the bail application and to release the petitioner/accused on regular bail by accepting surety in the interest of justice.

2) In the bail application the contents of the complaint/charge-sheet has been reiterated and further stated that based on the complaint filed by the complainant who is the P.S.I. of Kembhavi police station, case is registered against the present petitioner/accused and after completion of investigation, I.O. submitted the charge-sheet, against **the present petitioner/accused for the offences punishable under Sections 20(a)(ii), (B) and (C) of NDPS Act, 1985.** The petitioner/accused is in judicial custody and hence sought regular bail on the following grounds;

GROUND OF BAIL READS AS UNDER

- i) That the petitioner is innocent and he has nothing to do with the alleged incident and he has been falsely implicated by the complainant by making false allegations. Absolutely there is no material to show that the petitioner has committed the alleged offences.*
- ii) It is further stated that the offences alleged are not exclusively punishable with death or life. The petitioner is in judicial custody since 25-9-2020. He is the permanent resident of the village shown in the cause title, where he got movable and immovable properties.*
- iii) It is further stated that the petitioner is ready to abide by the conditions and ready to furnish surety.*

So on all the grounds, accused/petitioner prays this Court to enlarge him on bail in the interest of justice.

3) State filed objections, wherein the contents of the complaint/charge-sheet has been reiterated and further stated that now charge-sheet has been filed and prima-facie there are

sufficient materials as against the petitioner/accused. If accused/petitioner is released on bail, there is every chances of he indulging in committing similar offences in future and there is every chances of he absconding. Consumption of ganja is injurious to health. If he is released on bail that will send a wrong message to the society and there is every chances of he remaining absent and influencing witnesses and fleeing from justice and prays for rejection of bail application.

4) Heard the arguments of both side and perused the records.

5) Now the points that arise for my consideration are;

1. ***Whether bail application filed by the petitioner/accused U/Sec. 439 of Cr.P.C. deserves to be allowed?***

2. ***What Order?***

6) My finding on the above points are as under;

Point No.1 :- In the negative.

Point No.2 :- As per for the following;

REASONS

7) **Point No.1:-** In this case investigation has been completed and charge-sheet has been filed.

8) On careful perusal of the charge-sheet, it is seen that about 22 kg, 400 grams of wet ganja including root and mud was seized, which was grown by the present petitioner/accused and the same has been dried and after drying, it was weighing about 6.170 kg. worth of Rs.18,510/- and accordingly sample was also taken to an extent of 100 grams, separately packed in white colour cloth so as to send the same to F.S.L. for chemical analysis.

9) The complainant in this case is none other than the P.S.I. of Kembhavi police station, who got credible information on 24-09-2020 at about 10-00 a.m. that accused in this case has grown ganja illegally in land bearing Sy.No.176 of Agni village limits and accordingly he has secured the presence of panchas CWs.2 and 3 and so also secured the presence of Gazetted Officer and thereafter he along-with his staff and panchas and the said Gazetted Officer i.e., CWs.4 to 6, 8 to 14 along-with the person to weigh the ganja and the photographer, had been to conduct raid for the purpose of seizing the ganja by taking assistance of one of the Village Accountant CW.15 who is the Village Accountant of Agni village.

10) Charge-sheet also discloses the fact that they had been to the said land bearing Sy.No.176 of Agni village and when they were proceeding in the said land, one person ran away from the spot and after inspecting the said land bearing Sy.No.176 of Agni village, the said informant/complainant alongwith the panchas and Gazetted Officer noticed illegal growing of ganja in between the cotton crop and the same has been packed in the presence of panchas, which are aged about 4 months wet ganja plants. It also reveals as if there were 20 big ganja plants which were grown to a height of 3½ feet in length, which also consist of flowers and seeds, 70 plants

were of a height of 2 feet in length. It also reveals as if the present petitioner who is the accused has grown the ganja without having any valid license and photograph was also taken in this regard and the said ganja was weighed through CW.14 and the weight of the ganja is 22 kg, 400 grams and the said big ganja was also bundled i.e., 4 bundles containing five each ganja plant in each bundle and the remaining 70 small ganja plants was converted to a separate bundle. It also reveals as if 100 grams of wet ganja was seized and the same has been separately packed and sealed to send the same for chemical analysis and the total worth of the ganja is shown as Rs.67,400/- and accordingly charge-sheet has been submitted alleging that accused has committed the offences punishable under Sections 20(a)(ii), (B), (C) of NDPS Act, 1985.

11) Admittedly in this case, at this stage, petitioner/accused has not produced any prima-facie document to show that he is not the owner of the said land in question where the alleged ganja is grown/seized. The offences alleged against the present petitioner is one under Sections 20(a)(ii), (B), (C) of NDPS Act, 1985 and the punishment prescribed for the said offences reads as under;

Section 20. Punishment for contravention in relation to cannabis plant and cannabis — *Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted there under, —*

- a) *cultivates any cannabis plant; or*
- b) *produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,*

shall be punishable,—

1[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

A) and involves small quantity, with rigorous imprisonment for a term which may extend to [one year] , or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

12) While deciding the bail application under Section 439 of Cr.P.C., in my opinion a mini trial is not warranted. The only question to be looked into is with regard to heinousness of the

offence, antecedents of the accused, nature of offence, allegations against the accused, length of punishment prescribed for and chances of accused fleeing from justice.

13) The conduct of the present petitioner/accused also assumes importance in this case and prima-facie on perusing the charge-sheet, it reveals that **the present petitioner who is accused, has grown the wet ganja plants to an extent of 22 kg., 400 grams worth of Rs.67,400/- illegally in between the cotton crop by concealing the same to escape from the clutches of law and adopted short cut method of making money knowing fully well that ganja which is grown by him is injuries to the health of a person who consumes it.**

14) Now prohibition of Narcotic Drugs and Psychotropic Substances has become a menace not only in the State, but also in the Country level and the same is a hue and cry on the society, but the present petitioner who is the accused, without having any fear or respect towards law of the land indulged in growing the ganja plants for commercial purpose to sell the same and to make the money.

15) Merely because accused is in judicial custody since 25-9-2020 and merely because investigation is completed and charge-sheet is filed cannot be a ground to grant bail under Section 439 of Cr.P.C..

16) If bail is granted, there is every chances of absconding of the present petitioner/accused and there is every chances of threatening the private mahazar witnesses resulting in delay of the trial.

17) So viewed from any angle, this is not a fit case to grant bail which lacks bonafides and which deserves to be rejected. Hence, I answer the above point No.1 in the **Negative**.

18) **Point No.2:-**In view of my findings on point No.1, I proceed to pass the following order;

ORDER

Bail application filed by petitioner/accused under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to the Judgment-Writer, transcribed by him, script corrected by me and then pronounced in open Court on this the **11th** day of **January, 2021**).

(S. SRIDHARA)
Sessions Judge,
Special Court,
Yadgiri.