



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 201696 OF 2025
(439(Cr.PC)/483(BNSS))

BETWEEN:

1. FEROZ RAJU SHAIK S/O. RAJU SHAIK,
AGE 40 YEARS, OCC. DRIVER,
R/O PLOT NO.13, PARVEEN BAGLAW LINK,
ROAD, TIRANGA NAGAR, PANDARPUR
DIST. SOLAPUR-413 304.
2. RIYAZ S/O. MAQBOOL MUJAWAR,
AGE 23 YEARS, OCC. LABOUR,
R/O PADMAVATI NAGAR, MALASIRAS ROAD,
AKLUSE, TQ. MALSIRAS ROAD, AKLUSE,
TQ. MALSIRAS, DIST. SOLAPUR-413 107.

...PETITIONERS

(BY SRI SHIVANAND V. PATTANSHETTI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH BASAVAKALYAN RURAL POLICE STATION,
DIST. BIDAR-585 401.
R/BY ADDL. SPP HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585 107.

...RESPONDENT

(BY SRI VEERANAGOUDA MALIPATIL, HCGP)

THIS CRIMINAL PETITION IS FILED U/S. 439 OF CR.P.C
(OLD), 483 OF BNSS (NEW), PRAYING TO GRANT THE



REGULAR BAIL TO THE PETITIONERS/ ACCUSED NO.1 AND 2 IN SPL. C NO. 5026/2025 (BASAVAKALYAN RURAL PS CRIME NO.16/2025) PENDING ON THE FILE OF II ADDL. DISTRICT AND SESSIONS JUDGE BIDAR SITTING AT BASAVAKALYAN, FOR THE OFFENCES PUNISHABLE U/SEC. 20(b)(ii)(C) OF NDPS ACT 1985 AND SEC. 281 OF BNS 2023 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This petition is filed under Section 483 of BNSS, 2023 by the petitioners/accused Nos.1 and 2 for grant of bail in Crime No.16/2025 dated 03.02.2025 registered by the Basavakalyana Rural Police, for the offence punishable under Section 281 of Bharatiya Nyaya Sanhita, 2023 [for brevity, 'the BNS, 2023'] and Section 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 [for brevity, 'the NDPS Act'], presently pending on the file of II Additional District and Sessions Judge, Bidar, sitting at Basavakalyana in Spl.C.No.5026/2025.

2. The factual matrix of the case is that, on 03.02.2025 at about 2.00 p.m. on the basis of credible



information, the Sub-Inspector of Basvakalyana Rural Police and his team, intercepted a white colour Maruti Swift car bearing Reg.No.MH-45/A-3389 at over bridge on NH-65 Highway road within the limits of Rajeshwar village and apprehended the petitioners and seized ganja to an extent of 123 kg 900 grams, which was being transported illegally by the petitioners from Hyderabad to Maharashtra without any licence or permit for the purpose of sale. As such, the respondent-Police registered the case against the petitioners in Crime No.16/2025 for the aforementioned offences. Subsequently, the respondent-Police produced them before the Special Court and thereafter, sent them to judicial custody. The petitioners are in judicial custody from 03.02.2025. Aggrieved by the same, the petitioners had approached II Additional District and Sessions Judge, Bidar, sitting at Basavakalyana for grant of regular bail in Crl.Misc.No.5180/2025. The same was rejected by order dated 16.09.2025. Hence, this petition.



3. Heard learned counsel for the petitioners and learned HCGP for the respondent – State.

4. Apart from urging several contentions, the counsel for the petitioners/accused Nos.1 and 2 has primarily contended that, there is no *prima facie* material available on record to connect these petitioners to the alleged contraband. He contended that the alleged ganja packets have been carried in 7 plastic bags, however, there is no whisper about the said 7 plastic bags either in the seizure mahazar or in the inventory mahazar prepared in the presence of learned JMFC, Basavakalyan. He also contended that the seizure mahazar is not conducted as per the provisions of Section 42(2) of NDPS Act.

5. According to him, there is a clear procedural lapse while registering the case against the petitioners under the provisions of NDPS Act. The alleged secret information received by the respondent-Police was not written in a separate register, except in the Station House



Diary. In such circumstance, the same is against the settled principles of law laid down by this Court and the Hon'ble Apex Court. It is the statutory mandate on the officer, who intends to enter and search, to write the information in a separate register, apart from Station House Diary. Accordingly, he prays to allow the petition.

6. *Per contra*, learned HCGP for respondent-Police contended that the respondent-Police have mentioned the information in the Station House Diary and also forwarded the same to the higher officer and obtained permission to conduct the search. According to him, since he immediately received the credible information, he mentioned the same in the Station House Diary and conducted raid. In such circumstance, he submits that, no such procedural irregularities happened in the case on hand. Further, he contended that the huge quantity of ganja has been seized at the instance of these petitioners. Accordingly, he prays to dismiss the petition.



7. I have given my anxious consideration both on the submission made by the learned counsel for the respective parties, so also perused the materials available on record.

8. Before delving into the merits of the case, it is appropriate to examine the provisions of Section 42(1) and (2) of the NDPS Act, which reads as under:

"42. Power of entry, search, seizure and arrest without warrant or authorisation. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property



which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.



(2) Where an officer takes down any information in writing under sub-Section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

9. As per the settled position of law, though Section 42(1) relates to the power of entry, search, seizure and arrest without warrant or authorization, at the same time Section 42(2) casts a mandate to the designated officer to record his reason to believe, from personal knowledge or information given by any person and taken down in writing, that an offence in respect of any narcotic drugs or psychotropic substances which is punishable under the Act has been committed or any document or article, which may furnish evidence of the commission of offence is kept or concealed in any building, conveyance or any enclosed place. He must record the reason for such belief, before entering and searching any such building or conveyance between sunrise and sunset. The Honb'le Division Bench of Calcutta High Court in the case of ***Babu Mondal and others vs. The State of West***



Bengal in **CRAN No.1/2019** dated 18.10.2023 at paras 18 to 24 held as under:

"18. Section 52-A of the NDPS Act enumerates the manner in which the seized narcotic drugs and psychotropic substances may be disposed of by the concerned Officer. Section 52-A(2) mandates that substances which have been seized and forwarded to the empowered Officer shall be inventoried identifying particulars of the substances or the packing, country of origin and other particulars as the Officer under section 52-A(1) may consider relevant in any proceeding under the Act. The concerned Officer shall also make an application to any Magistrate for the purpose of certifying the correctness of the inventory, taking photographs in the presence of Magistrate and certifying the correctness of photographs and drawing representative samples of the drugs/substances in the presence of the Magistrate and certifying the correctness of the list of samples drawn.

19. The evidence placed before the Court does not reflect that the concerned Officer complied with the mandate of section 52-A of the NDPS Act. The Supreme Court in Union of India v. Mohanlal; (2016) 3 SCC 379 directed that seized narcotic drugs and psychotropic or other controlled substances shall be forwarded to the Officer-in-charge at the nearest P.S or the Officer empowered under section 53 of the Act who shall approach the Magistrate and that the sampling shall be done under the supervision of the Magistrate. A



more recent judgment of the Supreme Court in Bothilal v. The Intelligence Officer Narcotics Control Bureau; 2023 (3) Supreme 644 relied on Mohanlal to hold that samples drawn and certified by the Magistrate in compliance with section 52-A(2) and (3) constitutes primary evidence for the purpose of the trial.

Mismatch in the quantity of samples collected and those sent to the forensic expert

20. *The second page of the FIR and the Report of the Central Forensic Laboratory reflects a discrepancy between the quantity of narcotic substances seized as samples and the quantity reflected in the Report of CFSL. The prosecution has not been able to explain the discrepancy in the quantity and a doubt therefore lingers on the difference between the samples seized and the samples sent to the CFSL. In Rajesh Jagdamba Avasthi v. State of Goa; (2005) 9 SCC 773, the Supreme Court noted the mismatch in the charas recovered from the appellant and the quantity received by the Science laboratory and found that the discrepancy considerably eroded the credibility of recovery proceeding including the possibility of tampering with the seized substances.*

The seizure was done in the P.S on the following day and not at the place of occurrence but

21. *This would appear from the deposition of PW 5 and PW 6 (seizure witnesses) who were declared hostile and was also corroborated by PW 7, Smt. Jamuna Burman during her cross-examination. The signatures*



of the accused were also not obtained by the Investigating Officer in the seizure list.

22. *Further, there were no independent seizure witnesses which is a mandatory requirement under section 100(4) of the Cr.P.C. Section 100(4) requires the Officer making a search under Chapter VII to call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search.*

The infirmities in the impugned judgment dated 4.4.2019 and why the findings are contrary to the material on record:

23. *The learned NDPS Court, Cooch Behar, came to the following findings:*

(i) Section 42 of the NDPS Act has duly been complied with by the seizing Officer/complainant by reducing the information in writing and by informing the same to his superior Officer and by acting as per the directions of his superior Officer namely the Addl. S.P, Mathabhanga.

(ii) The Addl. S.P, Mathabhanga, was duly informed as per the mandate of section 42 of the NDPS Act. The C.I., Mathabhanga (PW 13) was physically present at the time of search and seizure as also the B.D.O, Sitalkuchi (PW 10) who was also present as an Executive



Magistrate. Therefore, the entire process of search and seizure conducted by the O.C. Sitalkuchi, P.S was duly authorised by the superior Officer and Executive Magistrate.

(iii) The information was communicated to the superior Officer after confirmation of which and under the direction of the superior Officer, the complainant (PW 8) left the P.S at 22.05 hours and was accompanied by C.I., Mathabhanga which indicates substantial compliance of section 41(2) of the NDPS Act.

(iv) None of the accused persons have taken the plea that the houses from where the ganja was recovered and seized did not belong to the accused persons or that they were not present in the said house at the time of search and seizure.

(v) The prosecution's stand is corroborated from the evidence of all the witnesses in relation to the search, seizure and recovery of contraband substance. The evidence also identifies the accused persons.

24. *The above findings of the NDPS Court in the impugned judgment are directly contrary to the material placed before the Court and the evidence of the witnesses."*



10. This aforesaid Division Bench order of the Calcutta High Court has been challenged by the State before the Hon'ble Supreme Court in SLP (Crl.) Dairy No.15491/2024. The Hon'ble Supreme Court dismissed the appeal filed by the State by confirming the order of the Division Bench. In such circumstance, admittedly in the case on hand, the secret information was not narrated in the separate diary/register by the Station House Officer, there is a procedural lapse committed by the Police while registering the case.

11. In such circumstance, as held by the Division Bench in the above judgment, the petitioners are entitled for regular bail. Accordingly, placing reliance on the above judgment and also considering the aspect that the petitioners are in judicial custody from last one year and now that investigation is completed and charge sheet has been laid by the respondent – Police, the further custodial incarceration of the petitioners is not called for. Accordingly, without expressing any opinion on the merits



of the case, suffice to hold that the petitioners can be admitted to regular bail.

12. Accordingly, the petition is ***allowed***.

13. The petitioners/accused Nos.1 and 2 are directed to be enlarged on bail in Spl.C.No.5026/2025 arising out of Crime No.16/2025 registered by the Basavakalyan Rural Police Station, for the offences punishable under Sections 281 of BNS, 2023 and Section 20(b)(ii)(C) of NDPS Act pending on the file of II Additional District and Sessions Judge, Bidar sitting at Basavakalyan, subject to the following conditions:

- a) Petitioners shall execute a personal bond for a sum of Rs.1,00,000/- each with two sureties for the likesum, to the satisfaction of the jurisdictional Court;
- b) The petitioners shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts their appearance for valid reasons;



- c) The petitioners shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- d) The petitioners shall not involve in similar offences in future;
- e) The petitioners shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against them is disposed off.
- f) The petitioners shall mark their attendance before the Station House Officer, Basavakalyan Rural Police Station, on first Sunday of every month between 10.00 a.m. and 01.00 p.m. till the case registered against them is disposed off before the Trial Court.

Sd/-
(RAJESH RAI K)
JUDGE

SWK
List No.: 1 Sl No.: 6
CT-RJ