

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF MARCH 2014

BEFORE

THE HON'BLE MR.JUSTICE BUDIHAL R.B.

CRL.P.No.1522/2014

BETWEEN

SHIVASWAMY
S/O MANCHEGOWDA
AGED ABOUT 25 YEARS
RESIDING AT NO.7448
2ND CROSS, 1ST MAIN ROAD
LAKSHMANNAGAR
SUNKADAKATTE
BANGALORE-560 091

... PETITIONER

(BY SRI LAKSHMIKANTH K., ADVOCATE)

AND

STATE OF KARNATAKA
REP. BY BASAVESHWARANAGARA
POLICE STATION, BANGALORE
BY ITS STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE-560 001

...RESPONDENT

(BY SRI K.NAGESHWARAPPA, HCGP)

THIS CRL.P. IS FILED UNDER SECTION 439 OF CR.P.C.
PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CRIME
NO.538/2013 OF BASAVESHWARANAGARA P.S., BANGALORE
CITY, FOR THE OFENCES P/U/S 22(B) AND 27 OF NDPS ACT.

THIS CRL.P. COMING ON FOR ORDERS THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

This is the petition filed by the petitioner-accused No.2 under section 439 of Cr.P.C., seeking his release on bail for the alleged offences under sections 22 & 27 of the NDPS Act, registered in the respondent – police station Crime No.538/2013.

2. Brief facts of the prosecution case are that on 26.10.2013, the respondent – police have registered a suo-moto complaint against the accused alleging that on 26.10.2013 at about 1.00 P.M. when the complainant was in the police station, he received credible information alleging that one person near Kempegowda park, Kurubarahalli Circle, was trying to sell the Methaqualone substance. Thereafter, the complainant secured the panchas and along with the staff went to the spot, secretly observed one person holding a cover and trying to sell the substance and the complainant along with the panchas caught hold of him and on enquiry he revealed his name as Shivaswamy and also revealed that he is having

Methaqualone substance in his cover. After the complainant informed to the higher officers, they have seized the same in the presence of panchas and found 750 grams of Methaqualone and took 100 grams for sending the same to the FSL and drawn the Mahazar at about 2.20 to 3.20 p.m. Thereafter, the complainant came to the police station and registered the complaint.

3. Heard the arguments of the learned counsel appearing for the petitioner-accused No.2 and also learned HCGP for the state.

4. Learned Counsel for the petitioner during the course of his argument submitted that the respondent- police have not followed the mandatory provisions of the NDPS Act. He made the submission that the seizure of the alleged Methaqualone substance ought to have been done in the presence of authorized officer as per section 41(2) of the NDPS Act. He made the submission that in this case, no such authorized officer was present and it is only

before the police officer, the said substance was seized. In this connection, learned Counsel appearing for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in IV (2000) CCR 235 (SC). He made the submission that when the sample material was sent to the FSL for examination and report, the report given by the FSL also goes to show that it is not a Methaqualone but the information goes to show that the material seized was Diazepam. Hence, the Counsel submits that the prosecution has not placed prima-facie material to show the involvement of the petitioner in the commission of offence. He also submitted that the wife of the petitioner has delivered a child recently and there is nobody in the family to look after. Now that the investigation is complete and the chargesheet is filed, by imposing stringent conditions, the petitioner may be enlarged on bail.

5. As against this, learned HCGP appearing for the respondent-state during the course of his argument

submitted that the material seized is 750 grams which is much more than the commercial quantity. He also submitted that when the petitioner was apprehended, before seizing the material from his person, when the option was given to him as to whether his search has to be conducted in the presence of Gazetted Officer or before the Magistrate, the petitioner chosen that the police officer being the Gazetted Officer it can be seized in his presence only. He also made the submission that looking to the averments made in the complaint and also seizure mahazar and the statement of the witnesses, it clearly goes to make out a prima-facie case against the present petitioner for the commission of the alleged offence. Hence, he submitted that the petitioner is not entitled to be granted with bail.

6. I have perused the averments made in the bail petition, FIR, complaint, the order passed by the lower court, information of the FSL regarding examination of samples sent and about its opinion. As it is contended

by the learned Counsel for the petitioner, in this case, police officer himself was present at the time of seizure of the alleged material but there was no authorized officer as such for seizure of the material. Hence, the decision relied upon by the learned Counsel for the petitioner goes to show that the seizure is to be done in the presence the authorized officer. Not only that, the information of the FSL goes to show that the material seized was not a Methaqualone substance but it is a diazepam. In the bail petition, it is contended by the petitioner that he is innocent and not committed the alleged offence and he is ready to abide by any conditions which are to be imposed by this Court. Now the investigation is complete and charge sheet has been filed, as the counsel has also produced the documents issued by the hospital authorities, i.e. Prakruthi Clinic and it is his submission that the petitioner's wife gave birth to a child recently, therefore, looking into these materials on record, I am of the opinion that nothing further is to be seized from the

possession of the petitioner and stringent conditions can be imposed and he can be admitted to bail. In view of the material placed on record, so also the decision of the Hon'ble Supreme Court, I am of the opinion that it is a fit case to exercise discretion in favour of the petitioner.

7. Accordingly, the petition is allowed. The petitioner is ordered to be released on bail of the alleged offences, subject to the following conditions:

1. The petitioner shall execute a personal bond for a sum of Rs.50,000/- and shall furnish one solvent surety for the like sum to the satisfaction of the concerned Court.
2. The petitioner shall not tamper any of the prosecution witnesses, directly or indirectly.
3. The petitioner shall appear before the concerned Court regularly.

**Sd/-
JUDGE**

Yn.