



IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 31ST DAY OF JULY, 2024
BEFORE
THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.200924 OF 2024 (438)

BETWEEN:

SHIVRAM @ SHIVRAJ S/O FATTUGAMA RATHOD,
AGE: 46 YEARS, OCC: COOLIE,
R/O GAMA THANDA JAMBAGI,
TQ. AURAD, DIST. BIDAR-585401.

...PETITIONER

(BY SRI. SANJAY A. PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH CHINTAKI POLICE STATION,
AURAD CIRCLE, DIST. BIDAR-585401.
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585107.

...RESPONDENT

(BY SRI. F. M. INAMDAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C., PRAYING TO ALLOW THE PETITION THEREBY DIRECT THE RESPONDENT POLICE / CHINTAKI POLICE STATION, AURAD CIRCLE, DISTRICT BIDAR TO ENLARGE THE PETITIONER / ACCUSED NO.2 ON BAIL IN THE EVENT OF HIS ARREST IN CRIME NO.34/2024 DATED 26.06.2024 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 20 (b) (ii) (c) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 AS PER FIR (PENDING ON THE FILE OF PRL. DISTRICT AND SESSIONS COURT, BIDAR, DISTRICT BIDAR).

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

Digitally signed
by KHAJAAMEEN
L MALAGHAN
Location: HIGH
COURT OF
KARNATAKA



CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN)

This petition is filed by the petitioner – accused No.2 under Section 438 of Cr.P.C., seeking anticipatory bail in Crime No.34/2024 registered by the Chintaki Police Station, for the offence punishable under Section 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

02. Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent - State.

03. The case of the prosecution is that on the credible information the Police Sub Inspector of Chintaki Police Station along with the panchas were waited on the Chintaki – Bidar road, on the information that the accused persons were transporting the ganja illegally. At about 03.30 p.m. on 26.06.2024 two persons came on the motorcycle by having a baggage in front of the rider. While seeing them, the accused No.1 slow down the vehicle and



the accused No.2 is said to be jumped and ran-away and not able to catch. The police apprehended the accused No.1. After getting the information about this petitioner – accused No.2 and they enquired about the baggage, the accused No.1 told that it is ganja. Then in the presence of the Gazzeted Officer and panchas, they opened the baggage and found 12 pockets of ganja measuring 1 kg and odd, totally they measured 12 kgs 790 grams. Then they seized it and packed the same baggage and seized the motorcycle and take the accused No.1 to the police station. Accordingly, on the report prepared by the police, the FIR has been registered. The accused No.1 produced before the Court and he has been remanded to the judicial custody. The name of this petitioner mentioned by the accused No.1 is shown as accused No.2 in the FIR. Thereafter, the police trying to arrest this petitioner, hence is apprehending of his arrest in the hands of the police for having committed non-bailable offence. He has been approached to the learned Sessions Judge for granting of anticipatory bail, which came to be rejected. Accordingly, he is before this Court.



04. The learned counsel for the petitioner submits that the petitioner's name is implicated by the police only on the voluntary statement / confessional statement of the accused No.1, which is not admissible in the evidence. The seized ganja which is said to be brought, is already seized by the police along with the accused No.1. There is nothing to seize from this petitioner. The address of this petitioner and the address as told by the accused No.1 altogether was different place and there is no nexus between them. The statement of the accused No.1 is inadmissible in evidence. Even otherwise there is no samples were taken by the police while seizing the ganja, which is seized only on the same day from the accused No.1. There is violation of mandatory provision under Section 50 of NDPS Act. There is nothing required to be recovered from this petitioner. Therefore, prayed to allow the petition.



05. Per contra, the learned High Court Government Pleader objected the petition contending that the investigation is on progress. The petitioner is absconding, he required for custodial interrogation. The offence is serious in nature which is punishable more than 10 years. Therefore, prayed to dismiss the petition.

06. Upon hearing the arguments and on perusal of the records, it shows that alleged offence is serious one and more than 12 kgs of ganja was seized by the police, which is commercial quantity, for that 20 years punishment is prescribed under the NDPS Act. However, the accused No.1 was arrested on the spot. The allegation against this petitioner is that he has been escaped from the vehicle and he was only pillion rider. It cannot be said that he has no knowledge regarding the transporting of ganja by the accused No.1. The said ganja was purchased from the Telangana for selling for a sum of Rs.1,00,000/- per kg. The materials which are already seized by the



police under the panchanama, of course there was no samples were taken by the police at the time of seizer. However, the same could be produce before the Executive Magistrate for the purpose of inventory. The name of the petitioner is implicated only on the voluntary statement of the accused No.1. Until any recovery from this petitioner, that voluntary statement is inadmissible in evidence. Therefore, considering the facts and circumstances at this stage, it cannot be said that the petitioner has committed offence which is punishable under Section 20 (b) (ii) (c) of NDPS Act, which is punishable for more than 10 years.

07. Considering the facts and circumstances of the case, I am of the view that without expressing any opinion on the merits of the case, if the anticipatory bail is granted to the petitioner by imposing certain stringent conditions, no prejudice would be caused to the prosecution case. Accordingly, I proceed to pass the following;



ORDER

The petition filed by the petitioner is allowed.

The respondent – police are directed to release the petitioner - accused on bail in the event of his arrest in Crime No.34/2024 registered by Chintaki Police Station, Aurad Circle, Dist: Bidar, for the offence punishable under Sections 20 (b) (ii) (c) of NDPS Act, 1985, subject to the following conditions:

- (i) Petitioner shall execute personal bond for a sum of Rs.2,00,000/- with two sureties for the likesum to the satisfaction of the Investigating Officer;
- (ii) Petitioner shall surrender before the Investigating Officer within 15 days from the date of receipt of certified copy of this order;
- (iii) Petitioner shall not indulge in similar offence strictly;
- (iv) Petitioner shall not directly or indirectly tamper with any of the prosecution witnesses;



(v) Petitioner shall be deemed to be in custody for the purpose of any recovery under Section 27 of the Indian Evidence Act.

(vi) Petitioner shall appear before the Investigating Officer once in a week on every Tuesday between 10.00 a.m. to 04.00 p.m. within a period of two months and thereafter, he shall appear before the Investigating Officer once in a month on every second of calendar month for a period of another 04 months or till filing the charge-sheet, whichever is earlier.

If any of the bail conditions is violated, the prosecution is at liberty to file an application for cancellation of bail.

**Sd/-
(K NATARAJAN)
JUDGE**

KJJ
CT:SI
LIST NO.: 1 SL NO.: 16