



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 27TH DAY OF DECEMBER, 2024
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL PETITION NO. 103862 OF 2024
(439(Cr.PC)/483(BNSS))**

BETWEEN:

KULDEEPSING S/O. NARPATSINGH BHATI
AGE: 30 YEARS, OCC: AUTO MOBILE WORK,
R/O. CHANNAMMA NILAY BUILDING,
DESAYI ONI, HUBBALLI.

...PETITIONER

(BY SRI. T.R.PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA
HUBBALLI-DHARWAD CITY CEN P.S.
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENCH DHARWAD.

...RESPONDENT

(BY SMT. KIRTELATA R.PATIL, HCGP FOR SOLE RESPONDENT)

THIS CRIMINAL PETITION IS FILED U/S 439 OF CR.P.C. (483 OF BNSS), SEEKING TO RELEASE THE PETITIONER/ACCUSED NO.2 ON BAIL IN SPL. NDPS CC NO.14/2024 ARISING OUT OF HUBBALLI-DHARWAD CITY CEN CRIME NO.118/2024 REGISTERED FOR THE OFFENCES PUNISHABLE U/S 20(b) (ii) (B) OF NDPS ACT-1985 AGAINST HIM, PENDING ON THE FILE OF THE PRL.DISTRICT AND SESSIONS JUDGE, DHARWAD.

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



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE G BASAVARAJA)

Heard on bail application filed under Section 483 of Bharaity Nagarik Surakasha Sanhita 2023 (For short 'the BNSS 2023').

2. Kuldeepsing S/o. Narapatsingh Bhati/accused No.2/petitioner herein has preferred this petition for grant of bail as he is in judicial custody for more than six months.

3. The brief facts of the case are that on the basis of the complaint filed by Sri.R.B.Patil, PSI, CEN Crime Police station, Hubballi-Dharwad City have registered a case in Crime No.118/2024 against the accused persons, for the commission of the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. After investigation, the Investigation Officer has submitted the charge sheet against the accused Nos.1 and 2.



4. It is alleged in the charge sheet that on 24.06.2024, between 4.30 p.m. to 5.00 p.m., on public road, near Bankapur Chouka Desai oni, Hubballi, the accused No.1 was possessing 1243 Grams of Ganja in a carry bags with an intention to sell the same along with the accused No.2. Thus, the accused have committed the aforesaid offences.

5. The learned counsel for the petitioner vehemently submits that a plain reading of the charge sheet reveals that accused No.2, who is petitioner herein was possessing the ganja at the relevant point of time. The only allegation against the accused No.2 is that the accused No.2 was accompanied with accused No.1, which is not sufficient to come to the conclusion that the accused No.2 has committed the alleged offence. The Investigating Officer has arrested the accused on 24.06.2024, whereas the Investigating Officer has submitted the PF on 28.06.2004. Investigating Officer has not properly complied the provisions of Section 52(A) of the NDPS Act



as he has obtained the certificate from the Magistrate in the absence of accused and panchas only on 02.07.2024. The Investigating Officer has not submitted the seizure mahazar to the jurisdictional Magistrate at the earliest point of time and only at the time of filing charge sheet he has submitted the seizure mahazar to the jurisdictional Magistrate. Accordingly, Investigating Officer has failed to comply with the mandatory provision of Sections 42, 50, 52(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and also provision of Sections 100(7) and 102 of Cr.P.C. Absolutely, there are no materials placed by the prosecution to attract the alleged commission of offence by the present petitioner. Further, he submits that the charge sheet is already submitted before the learned Magistrate, the petitioner is not required for further investigation. He submits that the petitioner is ready to abide by the conditions that may be imposed by this Court. The seized quantity of contra banned is only 1243 grams, which is not a commercial quantity. He further submits that in view of the order passed by this Court in



Crl.P.Nos.4637/2024, 7523/2024, 4416/2024, 10093/2023 seeks for allowing the application and enlarging the petitioner on bail.

6. Smt. Keerthilatha R Patil, the learned HCGP appearing for the respondent/State submits that there are sufficient materials to attract the alleged commission of offence by the present petitioner along with accused No.1 and the prosecution has made the prima facie case against the petitioner. She further submits that petitioner is resident of Rajasthan, if the bail is granted to him, there may be possibility of absconding. Hence, sought for rejection of the bail application.

7. Heard on both sides and perused the material on record.

8. On perusal of the material on record it reveals that the Investigating Officer has seized the alleged Ganja from the possession of the accused on 24.06.2024 and he has submitted the report to the jurisdiction Magistrate with



the PF on 28.06.2024. The Investigating Officer has obtained the certificate from the learned Magistrate under Section 52(A) of the NDPS Act on 02.07.2024. The allegation made in the charge sheet does not reveal that the present petitioner/accused No.2 was possessing the alleged ganja at the relevant point of time. The only allegation against this petitioner is that he has accompanied with the accused No.1 and the accused No.1 was having intention to sell this ganja through accused No.2. On careful examination of the materials placed before this Court, at this stage, it appears that Investigating Officer has not properly complied the mandatory provision of Sections 42, 50, 52(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and also provision of Sections 100(7) and 102 of Cr.P.C. Additionally, the investigation is already completed, the accused is not required for further investigation. The main apprehension of the prosecution is that the petitioner is resident of Rajasthan, if the bail is granted to him, there are possibilities of absconding and the apprehension of the



prosecution is avoided by imposing stringent conditions. The petitioner/accused No.2 is in judicial custody for more than six months. Considering the nature and gravity of the offence, the quantity of the ganja seized, the previous antecedents of the petitioner, that the petitioner has not been convicted previously for any offence, it is just and proper to allow the application with certain conditions. Accordingly, I pass the following:

ORDER

The bail application filed under Section 483 of BNSS 2023 is allowed. The petitioner herein shall be released on bail in connection with Spl. NDPS. C.C.No.14/2024, registered by the CEN Crime Police Station, Hubballi-Dharwad City, subject to conditions that,

- (a) the petitioner/accused No.2 shall execute a self-bond for a sum of Rs.50,000/- with one surety for the likesum to the satisfaction of the Court concerned;
- (b) the petitioner/accused No.2 shall not tamper or threaten the prosecution witnesses;



- (c) the petitioner/accused No.2 shall appear before the trial Court on all the dates of hearing.
- (d) the petitioner/accused No.2 shall furnish his residential proof to the satisfaction of the jurisdictional Magistrate.

**Sd/-
(G BASAVARAJA)
JUDGE**

VB
Ct:vh
List No.: 1 Sl No.: 21