HC-KAR

NC: 2026:KHC:43699
CRL.P No. 9787 of 2026
C/W CRL.P No. 9868 of 2026
CRL.P No. 9874 of 2026

CNR: KAHC010457182026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 9787 OF 2026
C/W
CRIMINAL PETITION NO. 9868 OF 2026,
CRIMINAL PETITION NO. 9874 OF 2026

IN CRL.P No. 9787/2026:

BETWEEN:

JAFAR ALI IQBAL
S/O IQBAL MOHAMMED
AGED ABOUT 33 YEARS
R/AT NO. 3/68, BOSE STREET
KRISHNAMOORTHYNAGAR
KODUNGAIYUR, CHENNAI
TAMIL NADU - 600 118
(PRESENTLY IN CENTRAL PRISON
BENGALURU)

...PETITIONER

(BY SRI MUZAFFAR AHMED, ADV.)

Digitally signed by NANDINI M S
Location: HIGH COURT OF KARNATAKA

AND:

UNION OF INDIA
BY INSPECTOR OF CUSTOMS
AIR INTELLIGENCE UNIT
KEMPEGOWDA INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU - 560 300
REP. BY SPECIAL PUBLIC PROSECUTOR
BANGALORE - 560 001.

...RESPONDENT

(BY SRI MADHU N RAO, PRL. SENIOR STATNGING COUNSEL)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483 BNSS) PRAYING TO ENLARGE THE PETITIONER/ACCUSED NO.01 ON REGULAR BAIL IN CONNECTION WITH CR. NO. VII/48/66/2026-27 AIU-B CUS DATED 04/06/2026 REGISTERED BY RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 20(b)(ii) (C), 23(c),

28, 29 AND 8(c) OF NDPS ACT PENDING ON THE FILE OF THE HONBLE XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES, AT BANGALORE (CCH-33).

IN CRL.P NO. 9868/2026:

BETWEEN:

MOHAMED SUHAIL
S/O MOHAMED HUSSAIN
AGED ABOUT 27 YEARS
R/AT NO 41, SADAYAPPAN STREET
SEVEN WELLS CHENNAI
TAMIL NADU - 600 001
(PRESENTLY IN CENTRAL
PRISON, BENGALURU)

...PETITIONER

(BY SRI DIVEEN VARMA B, ADV.)

AND:

UNION OF INDIA
BY INSPECTOR OF CUSTOMS
AIR INTELLIGENCE UNIT
KEMPEGOWDA INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU - 560 300
REP BY SPECIAL PUBLIC PROSECUTOR
BANGALORE - 560 001.

...RESPONDENT

(BY SRI MADHU N RAO, PRL. SR. STANDING COUNSEL)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS) CR.P.C PRAYING TO ENLARGE THE PETITIONER/ACCUSED NO.3 ON REGULAR BAIL IN CONNECTION WITH CR.NO.VII/48/66/2026-27 AIU B CUS DATED 04.06.2026 REGISTERED BY THE RESPONDENT FOR THE OFFENCE P/US/ 20(b)(ii)(c),23(c),28,29,8(c) OF NDPS ACT PENDING ON THE FILE OF THE HONBLE XXXIII ADDL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES, BENGLAURU (CCH-33) BY IMPOSING ANY CONDITIONS AS THIS HONBLE COURT DEEMS FIT IN THE CIRCUMSTANCE OF THE CASE.

IN CRL.P NO. 9874/2026:

BETWEEN:

ASAN ALI ANWAR ALI
S/O ANWAR ALI
AGED ABOUT 20 YEARS
R/AT NO. 8/15, THANDAVA MOORTHY
STREET, SEVEN WELLS, CHENNAI
TAMIL NADU - 600 001
(PRESENTLY IN CENTRAL
PRISON, BENGALURU)

...PETITIONER

(BY SRI M.G. RIYAZULLA KHAN, ADV.)

AND:

UNION OF INDIA
BY INSPECTOR OF CUSTOMS
AIR INTELLIGENCE UNIT
KEMPEGOWDA INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU - 560 300
REP BY SPECIAL PUBLIC PROSECUTOR
BANGALORE - 560 001.

...RESPONDENT

(BY SRI MADHU N RAO, PRL. SR. STANDING COUNSEL)

THIS CRL.P IS FILED U/S 439 CR.P.C (U/S 483 BNSS) PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CONNECTION WITH CR.NO.VII/48/66/2026-27 AIU-B CUS DTD 04.06.2026 REGISTERED BY THE RESPONDENT, FOR THE OFFENCES P/U/S 20(b)(ii)(c),20(c),28,29,8(c) OF NDPS ACT, PENDING BEFORE THE HONBLE XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES, AT BENGALURU (CCH-33)

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused nos.1 to 3 in Cr. No.VII/48/66/2026-27 AIU-B CUS registered by the respondent for the offences punishable under Sections 20(b)(ii)(C), 23(c), 28, 29, 27A & 8(c) of NDPS Act, are before this Court in these three petitions filed under Section 483 of BNSS, 2023, seeking regular bail.

2. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent who has filed statement of objections opposing the petitions.

3. It is the case of the prosecution that based on credible information received, petitioners herein who had arrived from Bangkok at Kempegowda International Airport in Bengaluru, were intercepted and from their baggage contraband article allegedly Hydroponic Ganja totally weighing 36.430 Kgs. was recovered under a panchanama. Subsequently, the petitioners were arrested and remanded to judicial custody. Their bail application filed before the Trial Court in Crl. Misc. No.5527/2026, Crl. Misc. No.5673/2026 & Crl. Misc.

No.5544/2026, were rejected on 27.06.2026. Therefore, they are before this Court.

4. Learned Counsel for the petitioners having reiterated the grounds urged in the petitions, submit that petitioners were carrying separate trolley bags which allegedly contained contraband article weighing 12.550 Kgs., 11.030 Kgs. & 12.850 Kgs., respectively. Therefore, the seizure of contraband article independently from an individual is of intermediate quantity. There is no material to show that there was conspiracy between the accused. They submit that the rigor under Section 37(1)(b) of the NDPS Act, therefore, cannot be made applicable.

5. Per contra, learned Counsel for the respondent who has strongly opposed the petitions, submits that petitioners who are from Tamil Nadu State had together traveled to Bangkok and returned to Bengaluru carrying trolley bags containing contraband article. Therefore, it is very clear that there was a conspiracy between them and they were in conscious possession of the contraband articles found in the bags carried by them which totally weighed 36.430 Kgs., which is of

commercial quantity. He submits that hydroponic ganja is extensively grown in Thailand and since Tetra Hydro Cannabinol (THC) contained in hydroponic ganja is much higher compared to the other products of cannabis plants, the value of hydroponic ganja is also much higher compared to ganja and the effect of consumption of hydroponic ganja is also very harmful. Only to get away from the rigor of Section 37(1)(b) of the NDPS Act, a modus operandi is followed by the accused to pack hydroponic ganja lower than 20 Kgs. in the bag carried by an individual. Since the act does not provide for the definition of 'hydroponic ganja', attempt is made to take advantage of the loophole in the law. He, accordingly prays to dismiss the petitions.

6. The NDPS Act is enacted with a view to make stringent provisions for the control and regulation of operations, trafficking, funding, etc., relating to narcotic drugs and psychotropic substances. Sections 2(viid), 2(xiv) & 2(xxiii) of the NDPS Act, defines the words 'controlled substance', 'narcotic durg' and 'psychotropic substance', respectively. The same reads as under:

"2(viid) "controlled substance" means any substance which the Central Government may, having regard to the available information as to is possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance.

2(xiv) "narcotic durg" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs.

2(xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule."

7. The punishment for violating the provisions of the NDPS Act, depends on the quantity of contraband article recovered from the accused or involved in the case. Section 2(viia) and Section 2(xxiiia) defines the words 'commercial quantity' and 'small quantity' in relation to the contraband article. In exercise of the powers conferred under the NDPS Act, notification specifying "small quantity" and "commercial quantity" is issued by the Central Government and the same is the basis for the

purpose of quantum of punishment for the offences under the provisions of the NDPS Act.

8. The seized contraband article in the present case is hydroponic ganja which is not defined in the NDPS Act. Section 2(iii)(b) of the NDPS Act defines 'ganja', and the same reads as under:

> "2(iii)(b) *ganja*, that is, the flowering of fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated."

8. The word "cannabis plant" is defined under Section 2(iv) of the NDPS Act, which reads as under:

> "2(iv) "cannabis plant" means any plant of the genus cannabis."

9. Cannabis is included in the definition of "narcotic drug", and chemical examination of cannabis has revealed that it contains a psychotropic substance known as Tetra Hydro Cannabinol which is included in the list of psychotropic substances specified in the Schedule given to the NDPS Act. Tetra Hydrop Cannabinol (THC) is considered as the most psychotropic active component contributing to the behavioral

toxicity of cannabis. If the THC is higher, the health effects are severe. Cannabis that contain very low amount of THC is considered as hemp, and if there is higher THC, it is considered as Marijuana. Bhang, Ganja, Charas, Hashish, Hydroponic Ganja, etc., are forms of Marijuana having different THC. The THC of hydroponic ganja is found to be comparatively higher than the THC found in "ganja" as defined under Section 2(iii)(b) of the NDPS Act.

10. Hydroponic ganja or hybrid ganja is artificially grown in controlled environment with water rather than soil. The comparative study would reveal that THC in normal ganja is 1/3rd of the THC found in hydroponic ganja or hybrid ganja. If the strength of THC is higher, the effect of consumption is also more harmful. Depending upon the THC of substance, it is valued. Therefore, the value of hydroponic ganja compared to ganja or other products of cannabis is much higher. However, in the notification issued by the Central Government, in exercise of its power under the NDPS Act, specifying small quantity and commercial quantity of narcotic drugs and psychotropic substances, hydroponic ganja is not included, and

therefore, though the potent and value of hybridponic ganja is much higher than regular ganja, for the purpose of punishment the entry at Sl. No.55 in the aforesaid notification which relates to ganja is taken into consideration.

11. According to the prosecution, this loophole is being exploited by the accused persons who deliberately carry bags containing hydroponic ganja weighing less than 20 Kgs. which would be considered as intermediate quantity, though the potent and value of the said contraband article is much higher.

12. This Court has noticed that there is a massive increase in these types of cases, where the accused are apprehended on their arrival from Thailand carrying hydroponic ganja. It is brought to the notice of this Court that having regard to the aforesaid modus operandi, courts have been releasing the accused on the ground that seized contraband article is not of commercial quantity, unmindful of the harm it is causing to the society.

13. Punishment for the alleged offences is one of the factors to be considered by courts while considering the bail application

and it cannot be the sole factor. Courts are the guardians of rule of law and interest of the society is the paramount consideration while considering the bail application of an accused. Hydroponic ganja has a much higher THC compared to ganja and its value is also much higher. Therefore, the harm caused to the society would also be much higher and this important aspect cannot be lost sight of by the courts while considering the bail application of the accused in a case which involves hydroponic ganja. Courts are required to be conscious while considering the bail application of the accused who try to take advantage of the loopholes in the law. Interest of the Society shall always be the prime concern of the courts when pitched with the right to liberty of an accused. The quantity of hydroponic ganja or hybrid ganja, which is a new variant of cannabis brought to our country and the menace caused by it is of serious concern and it needs to be curbed. Therefore, merely for the reason that accused is found in possession of intermediate quantity of hydroponic ganja, he cannot be granted bail.

14. In the present case, 36,430 Kgs. of hydroponic ganja has been recovered from accused nos.1 to 3, who had brought the same in three trolley bags which they carried from Thailand. Petitioners had traveled together to Thailand and brought the trolley bags to India, and therefore, prima facie it appears that they had conspired to commit the crime in question. Therefore, it cannot be said that they were not in conscious possession of the contraband article. Section 29 of the NDPS Act has been, therefore, rightly invoked in the present case. Investigation of the case is under progress and in view of the aforesaid analysis of the matter, at this stage, bail applications of the petitioners are liable to be dismissed. Accordingly, the following order:

15. Criminal petitions are dismissed, with liberty to the petitioners to file fresh bail applications before the Trial Court after the final report is filed.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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