HC-KAR

NC: 2026:KHC:61255
CRL.P No. 10504 of 2026

CNR: KAHC010483412026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 10504 OF 2026

BETWEEN:

CHUKWUDUEM JUSTICE NWAFOR
S/O NWAFOR
AGED ABOUT 43 YEARS,
R/AT SITE NO-340/81, AKSHAYA NILAYA
TUNGA LAYOUT, 13TH CROSS
6TH MAIN, BETTADASANAPURA
ELECTRONIC CITY, 1ST PHASE-1
BENGALURU - 560 100.

...PETITIONER

(BY SRI. BASAVARAJU T.A, ADVOCATE)

AND:

Digitally signed by NANDINI D
Location: HIGH COURT OF KARNATAKA

STATE OF KARNATAKA
BY CCB, BENGALURU CITY POLICE
REPRESENTED BY STATE PUBLIC PROSECUTOR
AT PUBLIC PROSECUTOR OFFICE,
HIGH COURT OF KARNATAKA
HIGH COURT BUILDING
AMBEDKAR VEEDI
AT BENGALURU - 560 001.

...RESPONDENT

(BY SRI. RAHUL RAI K, HCGP)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS) OF CR.P.C PRAYING TO ENLARGE HER ON BAIL IN CRIME NO.27/2024 OF CCB, BENGALURU CITY POLICE FOR AN OFFENCE P/US/ 8(c), 22(b), 22(c), 22(A) OF NDPS ACT WHICH IS PENDING ON THE FILE OF THE HONBLE XXXIII ADDL CITY CIVIL AND SESSIONS JUDGE, AND SPECIAL JUDGE FOR NDPS CASES AT BENGLAURU (CCH-33) IN SPL.C.NO.75/2025.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

Accused No.1 in Special Case No.75/2025 pending before the Court of XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru arising out of crime No.27/2024 registered by CCB Bengaluru City Police Station, Bengaluru for offences punishable under Sections 8(c), 22(b), 22(c) and 21(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' for short) is before this Court in this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking regular bail.

2. Heard the learned counsel for the parties.

3. FIR in crime No.27/2024 was registered by CCB Bangalore City Police Station, Bangalore for the aforesaid offences against unknown persons, based on the first information dated 24.07.2024 received from Mohammed Mukaram, Police Officer of CCB Bengaluru City Police Station and Narcotic Drugs Squad, CCB, Bengaluru. In the said case, the petitioner was arrested on 24.07.2024 and remanded to judicial custody. After completing investigation, charge sheet was filed against three persons and the petitioner is arrayed as accused No.1 in the charge sheet. His bail application filed before the Trial Court in Crl.Misc.No.5411/2026 was rejected on 04.07.2025. Therefore, he is before this Court.

4. Material on record would go to show that based on credible information received to the effect that in a house situated within the jurisdiction of Electronic City Police Station, Bengaluru, on 24.07.2024, search and raid was conducted to the aforesaid house by the first informant and his staff and from the said house, accused No.1 was apprehended and from his possession, contraband article allegedly MDMA crystals weighing 4 kgs was seized and recovered under panchanama.

Subsequently, based on the confession statement of accused No.1, a raid was conducted to the house of accused Nos.2 and 3 on 17.09.2024 and from the said house, accused Nos.2 and 3 were apprehended and from their possession, contraband article allegedly MDMA weighing 1 kg 50 grams was seized under panchanama. Thereafter, investigation was completed and charge sheet was filed against three persons.

5. Learned counsel for the petitioner has contended that first informant had received credible information when he was in the police station and therefore compliance of Section 42 of the NDPS Act becomes necessary. He submits that credible information was received by first informant on 24.07.2024 at 10.00 a.m. and FIR has been registered in the present case at 4.00 p.m. on the said date. He submits that petitioner has no other criminal antecedents and he is now in custody for more than two years. CW1, who was examined as PW2 has admitted during the course of his deposition that he has not reduced the credible information received by him in writing, which is requirement under Section 42 of the NDPS Act. Accordingly, he prays to allow the petition.

6. *Per contra*, learned High Court Government Pleader, who has opposed the petition submits that the seized contraband article from possession of the petitioner is of commercial quantity. The petitioner has no documents to stay in India and therefore, even if he is released on bail, he is required to be sent to the detention centre. He accordingly, prays to dismiss the petition.

7. In the first information dated 24.07.2024 CW1 has clearly stated that he had received credible information on 24.07.2024 to the effect that in the house bearing No.340/81, Akashaya Nilaya, Thunga Layout, 13th cross, 6th main, Bettadsanapura, Electronic City, 1st stage, Bengaluru, within the jurisdiction of Electronic City Police Station, one person who is of African origin was in possession of contraband article, MDMA and he was selling the same to students and public and unlawfully gaining money. It is not in dispute that credible information was received by CW1 when he was in the police station. CW1 is now examined as PW1 and he has stated that credible information was received by him at 10.00 a.m. on 24.07.2024. FIR in the present case has been registered at

4.00 p.m. on 24.07.2024. Material on record including the deposition of PW1 would go to show that credible information received by CW1 was not reduced in writing in the requisite register and forwarded to the higher officer as per Section 42 of the NDPS Act.

8. It is trite that while satisfactory compliance of Section 42 of the NDPS Act may be permitted, complete non-compliance of Section 42 of the Act is not permissible. The law in this regard has been laid down by the Hon'ble Supreme Court in the case of ***DARSHAN SINGH Vs. STATE OF HARYANA*** reported in ***(2016) 14 SCC 358***, it is held that mere registration of FIR based on credible information received is not a substitute for compliance of Section 42 of the NDPS Act.

9. The submission made by the learned counsel for the petitioner that the petitioner has no criminal antecedents is not disputed by the learned High Court Government Pleader.

10. The Hon'ble Supreme Court in the case of ***NITISH ADHIKARY @ BAPAN Vs. STATE OF W.B.,*** reported in ***2022***

SCC ONLINE SC 2068, wherein the accused was in custody for a period of 1year 7months and the trial was in preliminary stage has granted regular bail to the accused, as against whom charge sheet was filed for offences punishable under the NDPS Act.

11. In the case of ***CHITTA BISWAS @ SUBHAS Vs. STATE OF W.B.,*** reported in ***2020 SCC ONLINE SC 1536***, the Hon'ble Supreme Court has granted regular bail to the accused as against whom charge sheet was filed for offences punishable under the NDPS Act and accused was in custody for a period of nearly 1year 8months taking into consideration, the trial was at preliminary stage. In the present case, out of the 18 charge sheet witnesses only three charge sheet witnesses are examined till date as Ex-P1 to P3. It is not in dispute that the petitioner, who is a foreigner has no valid documents to stay in India. The co-ordinate Bench of this Court in the case of ***BABUL KHAN AND ANOTHER Vs. STATE OF KARNATAKA AND ANOTHER,*** reported in ***2020 SCC ONLINE KAR 3438*** has laid down certain guidelines to be followed by the Courts and the concerned authorities, in a case where a foreigner has

no valid documents to stay in India is released on bail. The said guidelines reads as follows:

> "***GUIDELINES.***
>
> *(1) As soon as the offence under Foreigners Act and other Laws is detected and there is a strong prima facie material to show that the detected person is a foreign national, and if he has no Passport or Visa, or if the Visa is expired, and he has no right to stay in Indian Territory, proceedings shall be immediately started to deport him to his nation, without un-necessary delay, from the date of registracion of FIR against such person.*
>
> *(2) The jurisdictional police have to immediately take steps to inform the concerned competent authorities to initiate proceedings to deport such foreign national to his mother country visa-a-vis other competent authorities also share the details of such person amongst themselves and concerned jurisdictional Court.*
>
> *(3) If the Court refuses to grant bail to those persons (foreign nationals) in any criminal case, the Court shall keep such person in regular jail, till the disposal of the case.*
>
> *(4) If for any reason the Court grants bail including anticipatory bail, in any criminal case where the offender is a foreign national, and the offences are under the Foreigners Act and/or also under any other Laws for the time being in force, and their Visa is cancelled or lapsed, or they have no Passport, or they are illegal migrants, then the Courts shall specifically order to keep them in detention centers, unless the competent authority has passed any order under section 3(2.)(a) to (f) of Foreigners Act, 1946, or till further orders of the court or till they are deported to their mother country.*
>
> *(5) If the case registered against the foreign nationals, ended in conviction, they shall be ordered to be kept*

in regular prison of the State till they serve their sentence, and after serving the sentence, they shall be kept in detention centers till, they are deported to their country.

(6) If the case ends up in discharge, release of the accused or acquittal, and their nationality is in dispute before the competent Tribunal, they shall be ordered to be kept in detention centers till they are deported to their country unless they have any right or otherwise entitled to remain in India, or the competent authority has passed any orders under section 3(2)(a) to (e) of Foreigners Act 1946, the acquittal, discharge or release of the accused is no bar for the concerned competent authorities to question the nationality of that person before the competent Tribunal.

(7) The Public Prosecutors, the defence Counsel and the Courts shall make all their efforts to expeditiously deal with such cases by giving priority, for its early disposal, so as to enable other competent authorities to take appropriate steps under the facts and circumstances of each case for deportation of such foreign national (accused) as early as possible. The Court may also if permissible under law, and applicable to the facts and circumstances of a case may invoke sections 265A to 265L under chapter XXI (A) of Code of Criminal procedure, after following due procedure.

(8) As far as possible where a foreign national is involved in a case, the courts shall make their endeavor to record evidence and write the judgment in English Language, if the accused in such case is not conversant with the local language.

(9) The Central Government and the State Governments shall take all necessary steps to establish as many as necessary Detention Centers, at Cities, Districts and Taluka places as per the detention Center Manual referred to in this judgment, with ail necessary basic facilities, as per the detention centre manual, as per the directions and guidelines of the Hon'ble Apex

Court in the case of Upadhyaya v. State of A.P. reported in (2007) 15 SCC 337, so as to keep the foreign nationals, till their deportation whenever they are ordered to be kept in detention centers by competent authorities or by the Courts.

(10) In case, the accused/foreign national is a woman or a woman having a child or the child itself, the competent authorities, including jail authorities, detention centers, and the Courts and Juvenile Justice Boards have to follow the Guidelines of the Hon'ble Apex Court laid down in Upadhyaya's case noted supra; in addition to the provisions under the Prisons Act as well as Prisons Rules, and Juvenile Justice Act and Rules strictly and meticulously in their letter and spirit.

(11) If a mother who is a foreign national, is in custody and having infant below the age of six years or up to six years, the court may order the child to accompany the mother during her custody. If, either of parents got arrested, then the custody of the child may be given to the other parent who is not arrested. If both the parents are arrested and they are in custody in same or in some other case, court may order custody of children to their close relative or to Government shelter home, or to any other organization recognized or undertaking of the government where government or concerned authorities can monitor the well being of the child, as per Juvenile Justice (Care and Protection of Children) Act, 2015 and Rules.

(12) If a foreign national is convicted by the Court, and any application for parole is made, the jail authorities have to take in to consideration the conditions enumerated under Section 4 of the Foreigners Act, 1946, in addition to the Prisons Act and Rules.

(13) If a Foreign National is found to be an illegal migrant and not a citizen of India, and has been involved in criminal offences under other law of the land for the time being in force, apart from Foreigners Act, the State Government or the Central Government as the case may be, take immediate

necessary steps by exercising their discretion after applying their mind to the facts and circumstances of the case, if necessary and if the circumstances warrants, if the said offences are not heinous or anti-social, or not punisnable with imprisonment for more than three years, or with fine only to withdraw those cases under Section 321 of Cr.PC, so as to enable the concerned authorities to take necessary steps to deport such persons to their mother country, as expeditiously as possible.

(14) The State Legal Services Authority, District Legal services Authorities, and Taluka Legal Services Committees, shall make a periodical visit to the jails and Detention centers to ensure and satisfy itself that the concerned authorities have taken necessary steps to implement the directions issued by the Hon'ble Apex Court in Upadhyay's case and also the Detention Center Manual, so as to take appropriate action to inform the concerned authorities to rectify their mistakes and also the Legal Services Authorities suo-motu can take steps in accordance with law to get the mistakes or errors rectified on the legal side.

(15) The Central Government and the respactive State Governments shall often revise the Detention Center Manual and also the Prisons Act and Rules based on the need of the hour to bring necessary changes, so as to effectively and efficiently implement the very object of such Manual and laws.

(16) The Central Government, the State Government, the Karnataka State Legal Services Authority, Karnataka Judicial Academy and Police Academy in the State shall take appropriate necessary swift action to sensitize all the stake holders, Judges, Prosecutors, Police Officers, Custom and Immigration Officers (FRRO-FRO), Jail Authorities and Officers delegated in Detention Centers, in this regard.

12. Since the petitioner is a person without having any criminal antecedents and since Section 42 of the NDPS Act has

not been complied in the present case, the rigor under Section 37(1)(b) of the NDPS Act cannot be made strictly applicable to the petitioner. Even otherwise, if it is found that there is delay in trial, the rigor under Section 37(1)(b) of the NDPS Act cannot come in the way of the Courts in granting bail to the accused.

13. Under the circumstances, I am of opinion that the prayer made by the petitioner for grant of regular bail needs to be answered affirmatively, subject to the guidelines laid down by this Court in the case of ***BABUL KHAN*** *(supra)* imposing appropriate conditions. Accordingly the following:

ORDER

(i) The criminal petition is ***allowed.*** The petitioner is directed to be enlarged on bail in Special Case No.75/2025 pending before the Court of XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru arising out of crime No.27/2024 registered by CCB Bengaluru City Police Station, Bengaluru for offences punishable under Sections 8(c), 22(b), 22(c) and 21(a) of the NDPS Act, subject to the following conditions:

a) The petitioner shall execute personal bond for a sum of Rs.2,00,000/- with two sureties for the likesum, to the satisfaction of the jurisdictional Court;

b) The trial Court is hereby directed that, at the time of releasing of the petitioner on bail, the Competent Authorities shall be informed to detain him in any of the Detention Centres in Bengaluru or at any place nearby Bengaluru City, till the trial is concluded;

c) It is also made clear that under Section 3(2) of the Foreigners Act, if the Competent Authority feels that by means of imposing restrictions on the movements of the petitioner by taking bond with or without surety for the observance or as an alternative to the enforcement of any of the prescribed or specific restrictions or conditions can control his movements, such orders may be passed by the Competent Authority with intimation to the Court;

d) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;

e) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

f) The petitioner however, shall not leave the jurisdiction of the Trial Court without prior permission till the case registered against him is disposed of;

g) The petitioner shall not involve in similar offences in future.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

JY
List No.: 1 Sl No.: 50