



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO.200531 OF 2024 (439)

BETWEEN:

DONDIBA S/O SHETTIBA JARAK,
AGE. 34 YEARS, OCC: SHEPHERD,
RESIDENCE OF DOMANAL,
TALUKA AND DISTRICT VIJAYAPURA-586101.

...PETITIONER

(BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH,
VIJAYAPURA RURAL POLICE STATION,
DIST: VIJAYAPURA-586101.
REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

THIS CRL.P. IS FILED U/S. 439 OF CR.P.C PRAYING TO,
GRANT THE REGULAR BAIL TO THE PETITIONER/ACCUSED IN
SPL.C.(NDPS) NO.5/2024 (VIJAYAPURA RURAL PS CRIME
NO.18/2024 DIST VIJAYAPURA) PENDING ON THE FILE OF
PRL.DISTRICT AND SESSION JUDGE AND SPL JUDGE
VIJAYAPURA DISTRICT VIJAYAPURA FOR THE OFFENCES
PUNISHABLE U/SEC 20(a), (b) (ii), (C) OF NDPS ACT, 1985, IN
THE INTEREST OF JUSTICE AND EQUITY.





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

CORAM: THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

The accused in Special Case (NDPS) No.5/2024 pending before the Court of Principal District and Sessions Judge/Special Judge, Vijayapur arising out of Crime No.18/2024 registered by Vijayapur Rural Police Station, Vijayapur for the offences punishable under Sections 20(a), (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') is before this Court under Section 439 of Cr.P.C. seeking regular bail.

2. Heard the learned counsel for the parties.

3. The FIR in Crime No.18/2024 was registered by Vijayapur Rural Police Station, Vijayapur initially for the offence punishable under Section 20(a)(b) of the NDPS Act against the petitioner herein on the basis of the first information dated 26.01.2024 received from Vinod Pujari, the Police Sub Inspector attached to Vijayapur Rural Police



Station. In the said case, the petitioner was arrested on 26.01.2024 and remanded to judicial custody. The investigation in the case is completed and charge sheet has been filed. The bail application filed by the petitioner before the jurisdictional Sessions Court in Crl.Misc.No.645/2024 was rejected on 06.05.2024. Therefore, he is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that the land in which the Ganja plants were grown and the property from where Ganja was seized do not belong to the petitioner and merely for the reason that the petitioner was found near the property in question he is falsely implicated in the case. He submits that investigation in the case is completed and charge sheet has been filed. The land in question to which raid was conducted by the police on 26.01.2024 originally belong to the father of the petitioner and in the year 2021, the same was sold under a registered sale deed to one Bhimashankar S/o.



Shantveerappa and even the revenue records of the land in question have been changed in the name of the purchaser and ever since then said Bhimashankar is in possession and cultivation of the said land. Accordingly, he prays to allow the petition.

5. Per contra, learned High Court Government Pleader has opposed the petition. She submits that the petitioner has got criminal antecedent and in the present case, commercial quantity of contraband article allegedly Ganja has been sized. Accordingly, she prays to dismiss the petition.

6. From a perusal of the averments made in the first information in the present case, it is seen that on 26.01.2024, when the first informant was in the Police Station, at about 12.30 p.m., he received credible information that in the property belonging to the petitioner herein, amidst the sugarcane crop, the petitioner had grown Ganja plants with an intention to sell the same. On receipt of such information, after obtaining permission



from his higher officers, the first informant along with his staff and panchas conducted raid to the land bearing R.S.No.92/2 of Bomanalli village, Vijayapur taluka. In the said land, raiding squad found Ganja plants, which were about three feet in height. They also found dry Ganja, which was packed in a container. The Ganja plants were seized and weighed and the total weight of the Ganja plants was 31 kgs. 280 grams and the total weight of the seized dry Ganja, which was found in a container was 45 kgs. 8 grams. The seized wet Ganja plants and dry Ganja were subjected to panchanama. The petitioner, who was found near the property allegedly tried to run away after seeing the police, but, he was apprehended and on enquiry, he allegedly admitted that he had grown Ganja plants in the property bearing R.S.No.92/2 and also had stored dry Ganja in a container.

7. Undisputedly, land bearing R.S.No.92/2 does not stand in the name of the petitioner. The material produced by the learned counsel for the petitioner along



with the petition would go to show that the said land originally belong to the father of the petitioner and in the year 2021 the same was sold to one Bhimashankar and the entries in the revenue records of the said land has been changed in his name. It is not in dispute that the aforesaid Bhimashankar is no way related to the petitioner. The material on record also go to show that a criminal case was earlier registered against the petitioner by the very same Police Station in Crime No.60/2021 alleging that the petitioner had grown Ganja plants in the property belonging to his mother. In the said case, the petitioner is being tried before the jurisdictional Sessions Court in Special Case (NDPS) No.9/2021.

8. It is the specific case of the petitioner that only for the reason that he was found near the property bearing R.S.No.92/2, he was taken to custody and has been implicated in the present case. The prosecution has failed to connect the petitioner to the land in which Ganja plants were grown and no case is registered against the



owner of the land in which Ganja plants were grown. The petitioner is in custody from 26.01.2024. The investigation in the case is completed and charge sheet has been filed. Considering the fact that there is absolutely no material to connect the petitioner to the alleged crime except his confession statement, I am of the opinion that rigor under Section 37(1)(b) of the NDPS Act cannot be made applicable to the case on hand. Under the circumstances, the petitioner has made out a prima facie case for grant of regular bail. Accordingly, the following order is passed:

ORDER

The criminal petition is allowed.

The petitioner is directed to be enlarged on bail in Special Case (NDPS) No.5/2024 arising out of Crime No.18/2024 of Vijayapur Rural Police Station, Vijayapur district, registered for the offences punishable under Sections 20(a), (b) (ii) (C) of the NDPS Act, pending before the Court of Principal District and Sessions



Judge/Special Judge, Vijayapur, subject to the following conditions:

- a) The petitioner shall execute personal bond for a sum of Rs.1,00,000/- with two sureties for the likesum, to the satisfaction of the jurisdictional Court;
- b) 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;
- c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- d) The petitioner shall not involve in similar offences in future;
- e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SRT
List No.: 1 Sl No.: 13