
(2022) 01 KAR CK 0012
In the Karnataka High Court
Case No : Criminal Petition No. 8128 Of 2021

Mohammed Imraj & Others

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 12-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(b)(ii)(c), 29, 37

Citation : (2022) 01 KAR CK 0012

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Sudhanva D.S, Krishna Kumar

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioners in Special Case No.152/2021, Crime No.21/2021 of

Chikkamagaluru CEN Crime Police Station, Chikkamagaluru, for the offences punishable under Sections 20(b)(ii)(c) and 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (the NDPS Act for short).

2. Heard the learned counsel for the petitioners and the learned High Court Government Pleader appearing for the respondent/ State.

3. The factual matrix of the case is that ganja, weighing 30 Kgs., were seized at the instance of these petitioners, who were keeping the ganja in the

Ape Goods Auto and selling the same to the public and students. After seizure of the same, a case is registered, investigated the matter and filed the

charge-sheet for the offences punishable under Sections 20(b)(ii)(c) and 29 of the NDPS Act.

4. The learned counsel appearing for the petitioners would vehemently contend that accused No.1 had already been enlarged on bail and these

petitioners are accused Nos.2 to 5 and they are similarly placed. Further, the learned counsel also vehemently contends that the ganja seized is not

within the meaning of definition of the Act and these petitioners are in the custody from the last 8 months. Hence, they may be enlarged on bail.

5. Per contra, the learned High Court Government Pleader appearing for the State would submit that the ganja seized quantity is a commercial

quantity i.e., 30 kgs. Apart from that, accused No.2 is a habitual offender and against him Crime No.37/2020 and Crime No.41/2020, are registered

under the NDPS Act. Accused No.3 is also a habitual offender and he is also an accused in Crime No.24/2020 for the offences under the NDPS Act.

The learned High Court Government Pleader appearing for the State also contend that the ganja seized when they were keeping and selling the same

to the general public and FSL report was awaited. With regard to the contention of the petitioners, unless the FSL report is received, whether it is

ganja as defined under the NDPS Act or not, it is not a fit case to exercise the powers under Section 439 of Cr.P.C. The learned High Court

Government Pleader appearing for the State also would submit the order passed by this Court in CrI.P.No.4774/2021 cannot be a precedent to invoke

the parity in a heinous offence i.e., ganja of 30 kgs., was seized.

6. Having heard the respective counsel, the ganja was seized from the petitioners along with accused No.1 when they were keeping the same in Ape

Goods Auto and selling the ganja illegally in front of Mugthihalli Kere, Mugthihalli Village and the quantity of ganja seized is 30 Kgs, which is a

commercial quantity. Now, the very contention of the learned counsel for the petitioners is that the said ganja seized is not under the definition of the

NDPS Act and these petitioners are in the custody from the last 8 months.

7. Having taken note of the quantity of ganja and the very contention of the same is not defined under the NDPS Act, cannot be accepted since the

report is awaited. Apart from that, the bail granted in favour of accused No.1 in CrI.P.No.4774/2021 dated 02.08.2021, this Court in the very beginning

of the order observed that the materials placed before the Court discloses the strong prima facie evidence against the present petitioners and while

exercising the discretion came to the conclusion that accused No.6 is still

absconding cannot be a ground to detain the petitioners in the custody but no reasons are assigned and cannot be treated as precedent and will not come to the aid of the petitioners.

8. When such being the factual aspects of the case, the ground of parity cannot be invoked against the petitioners herein. The Apex Court in the case

of Ramesh Bhavan Rathod V. Vishanbhai Hirabhai Makwana (Koli) And Another reported in (2021) 6 SCC 230, dealing with the case of parity

held that bail on ground of parity with co-accused manner in which to be determined â?" while applying principle of parity, court cannot exercise its

powers in a capricious manner and has to consider totality of circumstances before granting bail â?" Parity while granting bail must focus upon role of

accused, and not only on weapon carried by accused â?" Merely observing that another accused who was granted bail was armed with similar

weapon is not sufficient to determine whether bail can be granted on the basis of parity. In deciding aspect of parity, role attached to accused, their

position in relation to incident and to victim is of utmost importance. It is further observed that whether order granting bail can be relied on as a

precedent is a matter for future adjudication if and when application for bail is moved on grounds of parity on behalf of another accused. In the event

that parity is claimed in such case thereafter, it is for that court before whom parity is claimed to determine whether case for grant of bail on grounds

of parity is made out.

9. Having read the papers and the materials available on record and I have already pointed out that earlier dealing with the bail petition of accused

No.1, this Court came to the conclusion that there is a strong prima facie case. However granted bail. The same cannot be a precedent to this Court

to exercise the parity and while granting the parity also, the Court has to examine and determine whether it is a case for grant of bail on the ground of

parity or not. In the case on hand, the commercial quantity of 30 Kgs., of ganja was seized at the instance of accused Nos.2 to 5 along with accused

No.1. The main contention of the learned counsel for the petitioners is that the seized quantity of ganja is not within the meaning of the definition of

NDPS Act and the FSL report is awaited. On that ground also, the petitioners are not entitled for bail. Apart from that, accused No.2, is also facing

the trial in respect of Crime Nos.37/2020 and 41/2020 for the similar offences.

Accused No.3, is also facing the trial in respect of Crime No.24/2020

for the similar offences. Hence, when the cases are registered against these petitioners under the NDPS Act, it is not a fit case to exercise the

discretion. It is also important to note that selling of ganja in the public place is a menace to the Society. With that object only, Section 37 of the NDPS

Act is framed. The petitioners have to make out a case under Section 37 of the NDPS Act to enlarge them on bail. I do not find any such ground to

enlarge the petitioners on bail at this juncture, unless the FSL report is received regarding the ganja is concerned.

10. In view of the discussions made above, I pass the following:

ORDER

(i) The bail petition is rejected.

(ii) However, liberty is given to the petitioners to approach this Court after getting the FSL report.