



AIROnline 2020 Kar 2123

Karnataka High Court

HON'BLE JUDGE(S): S. VISHWAJITH SHETTY , J

Mohammed Aris A. v. State of Karnataka

CRIMINAL PETITION - 3236 of 2020, decided on 17/07/2020

Criminal P.C. (2 of 1974) , S.439— Bail - Application for - Offence u/S.20(B)(ii) of NDPS Act - Police seized 106 grams of ganja, two mobile phones with one sim and scooter from possession of accused - Quantity of ganja seized from possession of accused being small quantity, restriction u/S.37 of NDPS Act, would not come in way of granting bail to accused - Accused presently in custody and prosecution could not place any material to show that he is involved in any other similar case - Remand report revealing that police not seeking custody of accused for purpose of any further investigation - Accused enlarged on bail, subject to stringent conditions.

(Para 9)

Case Referred :

Chronological Paras

CrI.Misc.No.5063/2020

Name of Advocates

Harish. M. G. for Petitioner; Mahesh Shetty, Hcgp for Respondent.

1. ORDER :-Petitioner, who is accused No.9 in Crime No.40/2020 registered by the Virajpet Town Police Station, Kodagu, for the offence punishable under Section 20(B)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, has filed this petition under Section 439 of Cr.P.C. with a prayer to enlarge him on bail in the said case.

2. On 19.05.2020 at about 6.00 p.m., the Sub- Inspector of Police attached to Madikeri Rural Police Station, on the basis of a credible information received by him lodged the complaint before the Station House Officer of Virajpet Town Police Station stating that he had information that one Nisar Ahmed s/o Chand Pasha, Sadiq of Selvanagar and their accomplices were daily selling ganja near a playground situated at Sunkadakatte Pampinakere of Virajpet town. On the basis of the said complaint, the Station House Officer, Virajpet Town Police Station had registered a FIR in Crime No.40/2020 and after informing about the same to his higher officers raided the spot along with his staff and panch witnesses. The Police had arrested totally 12 persons at the spot and one person allegedly ran away. After arresting the accused persons and after compliance of the requirements of the provisions of the NDPS Act, personal search of all accused persons was done. A seizure mahazar was prepared and thereafterwards all the arrested persons were produced before the jurisdictional Magistrate.

3. The petitioner had filed CrI.Misc.No.5063/2020 before the court of 1st Additional District and Sessions Judge, Kodagu at Madikeri and the same was dismissed on 20.06.2020.

4. The learned counsel appearing for the petitioner submits that the Police have falsely implicated the petitioner in the crime. He also submitted that only 106 grams of ganja has been allegedly seized from the possession of the petitioner, which is a small quantity. He further submitted that the petitioner's name is not found in the FIR and he is in custody ever since 20.05.2020. He has no criminal antecedents and he is ready and willing to furnish surety to the satisfaction of this court and he will also abide by any conditions that would be imposed on him.

5. On the other hand, learned HCGP seriously opposes the petition and contends that the investigation is still in progress and the total quantity of ganja seized in the case is about 9.322 kgs. and therefore at this stage, the petitioner is not entitled to be released on bail.

6. I have heard the arguments of the learned counsel for the petitioner and also the learned HCGP on

behalf of the State and also perused the material available on record.

7. From the possession of the petitioner, the Police have seized 106 grams of ganja and two mobile phones with one sim. The Police have also seized a scooter bearing registration No.KA-12/R-6785 from the petitioner. The quantity of ganja seized from the possession of the petitioner is a small quantity and therefore, the restriction under Section 37 of the NDPS Act would not come in the way in granting bail to the petitioner. The petitioner is in custody since 20.05.2020 and the prosecution has not placed any material to show that he is involved in any other similar case.

8. Further, after the seizure process was over, all the accused persons were produced before the jurisdictional Magistrate and even in the remand report, the Police have not sought for the custody of the accused for the purpose of any further investigation.

9. Under the circumstances, this court is of the view that the petitioner is entitled for the relief prayed for by him in the petition filed under Section 439 of Cr.P.C.

Accordingly, the petition is allowed. The petitioner is directed to be released on bail in Crime No.40/2020 registered for the offence punishable under Section 20(B)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, by the Virajpet Town Police Station, Kodagu, subject to the following conditions:

- 1) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- with one surety for the like-sum;
- 2) He shall not tamper with the prosecution witnesses either directly or indirectly;
- 3) He shall co-operate with the Police for the purpose of investigation of the case;
- 4) He shall appear before the Investigating Officer as and when called upon by him for the purpose of investigation.

Petition Allowed