NC: 2025:KHC:2181
CRL.P No. 13689 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 13689 OF 2024 (439(Cr.PC) / 483(BNSS))

BETWEEN:

MR. HUSSAIN T. P. P. S/O USMAN P,
AGED ABOUT 33 YEARS,
R/AT. THOTATTHI PUDIYA PURAYIL,
PULAMBAL ROAD, KANDIKAL, KANNURU,
KERALA STATE-670307.

...PETITIONER

(BY SRI H. MALATESH., ADVOCATE)

AND:

STATE BY EXCISE POLICE
MYSURU,
(REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BANGALORE)-01.

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

...RESPONDENT

(BY SRI M.R. PATIL, HCGP)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS) CR.P.C PRAYING TO GRANT AN ORDER OF REGULAR BAIL TO THE PETITIONER IN CONNECTION WITH CRIME NO.25/2023-24/26IE/260206 PENDING IN SPL.C.NO.396/2024 OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSURU FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 21(B), 22 AND 8(C) OF NDPS ACT.

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

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused No.1 in Special Case No.396/2024 pending before the Court of Principal District and Sessions Judge, Mysuru, arising out of Crime No.25/2023-24/26IE/260206, registered by Inspector of Excise, Office of Deputy Commissioner (Excise), Mysuru district, for the offences punishable under Sections 21(b), 22 and 8(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 petitioner.

3. FIR in Crime No.25/2023-24/26IE/260206 was registered against the petitioner and another and in the said proceedings, the petitioner herein was arrested on 26.09.2023 and subsequently produced before the Court and remanded to the judicial custody. The investigation of the case is completed and charge-sheet has been filed against two persons and the petitioner is arraigned as accused No.1 in the charge-sheet.

The bail application filed by the petitioner before the trial Court in Special Case No.396/2024 was rejected on 09.08.2024. Therefore, he is before this Court.

4. Learned counsel for the petitioner submits that, the accused No.2 has been granted regular bail by this Court in Criminal Petition No.11376/2024. The petitioner has no other criminal antecedents. The charge in the case is yet to be framed. Accordingly, he prays to allow the petition.

5. Per contra, learned High Court Government Pleader has opposed the petition. He submits that, the seized contraband article is of commercial quantity and in view of rigor under Section 37(1)(b) of the Act, the petitioner's bail application is liable to be rejected.

6. A perusal of the material on record would go to show that, on the basis of credible information received, a raid was conducted by Officers of the Excise Department to the alleged place, where the accused persons were attempting to sell the contraband article MDMA to the public. The Officers of the Excise Department had apprehended two persons from the place of raid and from their possession, contraband article

MDMA, totally weighing 13.90 grams was seized and subjected to mahazar. Subsequently, the apprehended accused were produced before the Court and remanded to judicial custody. The investigation of the case is completed and charge-sheet is filed.

7. The accused No.2 who was arrested along with the petitioner has been granted regular bail by this Court in Criminal petition No.11376/2024. This Court while granting regular bail to accused No.2, has observed that the prosecution has failed to strictly comply with the requirement of Section 42 and 57 of NDPS Act. This Court has also taken notice of the fact that, the seized contraband article which was found in eight plastic covers was weighed along with the plastic covers and total weight of the contraband article along with plastic covers was 13.90 grams. Undisputedly, the petitioner has no other criminal antecedents. He is in custody from 26.09.2023 onwards. It is not in dispute that, the case before the trial Court is still at the stage of framing charge. The accused No.2 as against whom similar allegation is found, has been granted regular bail by this Court in Criminal Petition No.11376/2024 disposed of on 15.11.2024. Since the prosecution has failed to

strictly comply the requirements of Sections 42 and 57 of the NDPS Act in the present case and also considering the period of incarceration of the petitioner, and the stage of the case before the trial Court, I am of the view that the rigor under Section 37(1)(b) of the NDPS Act, cannot be strictly made applicable against the petitioner.

8. Under the circumstances, I am of the opinion that the petitioner's prayer for grant of regular bail needs to be answered affirmatively. Accordingly, the following order:

ORDER

The petition is allowed.

The petitioner is directed to be enlarged on bail in Crime No.25/2023-24/26IE/260206 registered by Inspector of Excise, Office of Deputy Commissioner (Excise), Mysuru district, for the offences punishable under Sections 21(b), 22 and 8(c) of the NDPS Act, pending in Special Case No.396/2024 on the file of learned Prl. District and Sessions Judge, Mysuru, 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, out of which one shall be a local surety;

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

SVH
List No.: 19 Sl No.: 11
CT:PK