

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.6611 OF 2022

BETWEEN

ROSHAN KUMAR MISHRA
S/O AMARKUMAR MISHRA
AGED ABOUT 23 YEARS
R/AT PRAKASH'S RENTAL HOUSE
HENNANAGAR GATE BUS STOP
NEAR SHANKAR KITCHEN HOTEL
HOSUR MAIN ROAD, BENGALURU
PERMANENT ADDRESS
PIRI VILLAGE
BABUBARATHI THANA
MADHUBANI DISTRICT
BIHARA STATE

... PETITIONER

(BY SRI S MANOJ KUMAR, ADVOCATE)

AND

THE STATE OF KARNATAKA BY
BEGURU POLICE STATION
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU - 560 001

... RESPONDENT

(BY SRI R.D. RENUKARADHYA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.143/2022 OF BEGURU P.S., BANGALORE FOR THE OFFENCE PUNISHABLE UNDER SECTION 20(b) OF NDPS ACT WHICH IS PRESENTLY

PENDING BEFORE THE 41st ACMM, NRUPATUNGA ROAD, BANGALORE WHERE THE PRESENT PETITIONER IS ARRAIGNED AS ACCUSED (VIDE ANNEXURE-A TO BE PETITION)

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.08.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused under Section 439 of Cr.P.C. for granting regular bail in Crime No.143/2022 registered by Begur Police Station, Bengaluru for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. Heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader for the respondent - State.

3. The case of the prosecution is that the suo motu complaint registered by the Begur Police alleging that on 31.05.2022, the complainant-Police Officer received a credible information that in the vacant space adjacent to the Q Grill Bar and Restaurant of Chikkabeguru, two

persons were selling prohibited contraband ganja as well as Bhang and the informant also informed the complainant that the said two persons may arrive on the next day around the same time in the said spot. After receiving the information, the complainant obtained permission to conduct raid and they visited the spot along with his staff and panchas where the petitioner said to be in possession of ganja as well as Bhang. They seized 29 kgs of Bhang of different companies, 400 grams of ganja and brought the same to the Police station and got remanded the accused to the judicial custody. His bail application came to be rejected by the Special Judge. Hence, he is before this Court.

4. The learned counsel for the petitioner has contended that the petitioner is in possession of 400 grams of ganja which is less than the small quantity and he has been in possession of 63 packets of Tarang Company Bhang weighing 14 kgs and 44 packets of Masti Munaka Company Bhang weighing 10 kgs, totally, 29 kgs of Bhang.

The Bhang is a drink normally sold in the Lassi shops at North India. It is not a prohibitory drug. The said drink is used during the Shivarathri festival, it is not a banned drink and it does not fall under the NDPS Act. The petitioner is in custody for almost three months. He is ready to abide by the conditions that may be imposed by this Court. Hence, prayed for granting bail.

5. *Per contra*, learned High Court Government Pleader seriously objected the petition and contented that the Bhang is prepared out of the ganja leaves, therefore, it comes under the definition of ganja. The investigation is under progress. The seized articles are more than commercial quantity. Hence, prayed for dismissing the bail petition.

6. Having heard the arguments and on perusal of the records, which reveals, the petitioner was arrested by the Police and seized cannabis i.e., ganja weighing 400 grams which is not a commercial quantity. However, the learned High Court Government Pleader submitted that the

Bhang is prepared out of the ganja leaves which comes under the definition 2(iii)(c) of NDPS Act. The learned counsel for the petitioner has relied upon the judgment of the Bombay High Court in the case of **Madhukar vs. The State of Maharashtra** reported in **2002 SCC OnLine Bombay 1271**, whereas, the Bombay High Court while considering with regard to Bhang has stated that it is not covered under the NDPS Act, therefore, acquitted the accused for possessing the Bhang, but, convicted for the possession of ganja. Similarly, the petitioner counsel has relied upon the another judgment of Punjab and Haryana High Court in the case of **Arjun Singh vs. State of Haryana** reported in **2004 SCC Online P&H 828**, wherein, the Punjab and Haryana High Court has also acquitted the accused persons in the appeal as the Bhang is not covered under the definition of NDPS Act.

7. In view of the above said decisions of both Bombay High Court as well as Punjab and Haryana High Court wherein, they have followed the decision of

Rajasthan High Court and it is worth to mention the definition of Section 2(iii) of NDPS Act which reads as under:

"(iii) "cannabis (hemp)" means -

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;"

8. On bare reading of the provision under Section 2(iii)(a) and (b) that *charas* and *ganja* or (c) i.e., any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom, there is no scientific evidence before this Court to show

that the Bhang is prepared out of either *charas* or *ganja* or ganja leaves. Since ganja leaves and seeds are excluded from the definition of ganja and no where in the NDPS Act the Bhang is referred as a prohibited drink or prohibited drug. Even the State Government has not made any rules under the NDPS and mentioned about the Bhang as prohibitory drug or issued any notifications in respect of Bhang.

9. It is worth to mention that the Bhang is a traditional drink, most of the people used to drink in North India especially near the Shiva temples and it is also available in Lassi shops like all other drinks. That apart, the said Bhang were sold in the market with branded names. Therefore, until the receipt of forensic science lab report, in order to confirm that this bhang is prepared out of the by the *charas* or *ganja*, the Court cannot come to any conclusion that the bhang is prepared out of the substance of ganja. Therefore, at present, I am agreeing with the judgments of the Bombay High Court as well as

Punjab and Haryana High Court in the above said decisions that bhang is not covered under the NDPS Act.

10. Therefore, I am of the view that the petitioner is in custody for more than two months and FSL report is still awaited and though the investigation is pending, but the ganja in possession was only 400 grams, therefore, by imposing certain conditions, if bail is granted to the petitioner, no prejudice would be caused to the prosecution case, Hence, I pass the following

ORDER

Accordingly, criminal petition is ***allowed***.

The Trial Court is directed to release the petitioner-accused on bail in Crime No.143/2022 registered by Beguru Police Station, Bengaluru for the offence punishable under Section 20(b) of the NDPS Act, subject to the following conditions:

- (i) *Petitioner-accused shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakh only)*

with two sureties for the likesum to the satisfaction of the trial Court;

- (ii) Petitioner shall not indulge in similar offences strictly;*
- (iii) Petitioner shall not tamper with the prosecution witnesses directly/indirectly;*
- (iv) Petitioner shall appear before the Investigating Officer on every fortnight i.e., on 2nd and 16th of the Calendar Month for a period of six months till filing of the charge-sheet whichever is later.*

If any of the above conditions are violated, the prosecution is at liberty to move application for cancellation of bail.

**Sd/-
JUDGE**

GBB