

KABR010036262023



IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS
JUDGE & SPECIAL JUDGE (NDPS), BENGALURU RURAL
DISTRICT, BENGALURU.

Dated this the 19th day of August 2023

PRESENT:

Sri M.L. Raghunath B.A., LL.M.
Principal District & Sessions Judge
& Special Judge (NDPS),
Bengaluru Rural District,
Bengaluru.

Crl.Misc.No.1573/2023

Petitioner : Saheb Sekh
S/o Mafuldul Sekh,
Aged about 25 years,
R/at Bistuganj village,
Betai Jitpur Post,
Nadia District,
West Bengal – 741 163.

Represented by
Sri Mithun Kumar R.B., Advocate.

Vs.

Respondent : State of Karnataka by
Varthur police station.

Represented by learned Public Prosecutor.

ORDER

The petitioner has filed this petition under Section 439 of Cr.P.C., seeking an order of bail in Crime No.227/2023 of Varthur police station registered for the offence punishable under Sections 8(c), 20(b)(ii)(B) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Brief facts of the case of prosecution are that on 27.07.2023 at about 8.30 a.m., the complainant received credible information about one person was trying to sell Heroin and MDMA crystals near Halasahalli Road. Accordingly, the complainant police formed a team of raid and went to the spot and found the accused/ petitioner standing along with a violet and red colour bag and on apprehension, it is found that the petitioner was carrying of 40 Grams of Heroin and 50 grams of MDMA with him. Accordingly, a criminal case is came to be registered for the offences punishable under Sections 8(c), 20(b)(ii)(B) and 22(c) of NDPS Act.

3. Now the accused/petitioner contends that he is innocent of the alleged offences and a false case has been registered against him. The complainant police have not followed the mandatory provisions of Sections 41, 42, 50, 52 and 57 of the NDPS Act. The complainant police have seized 50 grams of MDMA and 40 grams of Heroin from the petitioner. The Heroin seized is an intermediate quantity and 50 grams of MDMA seized was weighed with the cover and other silver surrounded things and there is possibility of MDMA seized is being of intermediate quantity. The petitioner is in judicial custody. He undertakes to appear before the court regularly.

4. The learned Public Prosecutor filed objections to the bail petition and contends that the offences alleged against the accused are heinous offences against the society at large and the accused is in possession of commercial quantity of MDMA and Heroin. If the petitioner is released on bail, he will jump out of bail and may tamper the prosecution

witnesses and flee from justice. Moreover, there is a strong evidence against the petitioner for having possessed the commercial quantity of MDMA and hence prays for dismissal of the petition.

5. Heard arguments and perused records.

6. The following point arises for consideration:

Whether the petitioner is entitled to be released on bail?

7. My answer to the above point is in the negative for the following:

REASONS

8. It is alleged in the complaint that the petitioner was in possession of 40 grams of Heroine and 50 grams of MDMA at the time of the raid.

9. As per Sl.No.134 of the Notification specifying small quantity and commercial quantity of narcotic drugs and psychotropic substances, 0.5 grams of MDMA crystals is

shown as small quantity and 10 grams is shown as commercial quantity. So the quantity of 50 grams of MDMA crystals recovered in this case falls under the category of commercial quantity of contraband and as such the provisions of Section 37 of the NDPS Act can be made applicable. No doubt, 40 grams of Heroin seized from the petitioner is an intermediate quantity.

10. The burden is on the accused to prove that he was not in possession of MDMA and there are no grounds to believe that he is not going to be convicted for any offences under the provisions of NDPS Act.

11. Anyhow, the materials produced by the prosecution clearly discloses that this petitioner was found in possession of 50 grams of MDMA crystals which is a commercial quantity in nature and he did not give any satisfactory explanation with regard to his possession of narcotic drugs of commercial quantity.

12. The offences alleged against the accused/petitioner are found to be heinous offences, particularly, against the young generation of the society as there is every possibility of the petitioner having supplied the narcotic drugs to the youngsters and spoiling their life and career.

13. Granting or rejecting bail requires so many aspects such as possibility of the accused committing similar offences, jumping out of bail, delaying the trial and tampering with material evidence and witnesses, and impact of release of the accused on society etc., as is held in the reported case of State through CBI Vs. Amaramani Tripathi.

14. If the petitioner is released on bail, the possibility of the petitioner committing similar offences and also jumping out of bail and tampering with material evidence etc., cannot be ruled out. Accordingly, I treat the above point in the negative and pass the following:

ORDER

The petition filed by the petitioner under Section 439 of Cr.P.C., is dismissed.

(Dictated to the Judgment Writer, typed by her, after corrections pronounced by me in open court on this the 19th day of August 2023)

(M.L. Raghunath)
Principal District & Sessions Judge,
& Special Judge (NDPS)
Bengaluru Rural District,
Bengaluru.