CRL.P No. 2592 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL PETITION NO. 2592 OF 2023

BETWEEN:

SRI. MAHADEVA
S/O GUNDAIAH
AGED ABOUT 35 YEARS
R/A KABBALAYYANA DODDI VILLAGE
KANAKAPURA TALUK
RAMANAGARA DISTRICT - 562126

...PETITIONER

(BY SRI DIVYA R B., ADVOCATE)

AND:

STATE OF KARNATAKA
BY KODIHALLI POLICE STATION
REP. BY SPP
HIGH COURT OF KARNATAKA
BANGALORE 560001

...RESPONDENT

(BY SRI S.VISHWAMURTHY, HCGP)

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

THIS CRL.P IS FILED U/S.439 CR.P.C PRAYIING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.14/2023 OF KODIHALLI P.S., RAMANAGARA FOR THE OFFENCE P/U/S.20-A OF NAROCTIC DRUGS AND PSYCHOTROPIC SUBSTANCE ACT 1958 BEFORE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT RAMANAGARA.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Heard Smt. Divya R.B., learned counsel for the petitioner and Sri S. Vishwa Murthy, learned High Court Government Pleader for the respondent-State.

2. This petition is filed under Section 439 of Cr.P.C., with the following prayer:

> *"WHEREFORE, the petitioner prays that this Hon'ble Court may be pleased to direct to release the petitioner on bail in Crime No.14/2023 of Kodihalli Police Station for an offence punishable under section 20A of Narcotic Drugs and Psychotropic Substances Act, 1958 before Principal District & Sessions Judge at Ramanagara, on such terms and conditions as deemed fit in the interest of justice and equity."*

3. Brief facts of the case are as under:

Sri Ananthram K.A., Sub-Inspector of Police, Kodihalli police station lodged a report with Kodihalli police station,

Ramanagara District. Based on which a crime came to be registered in Cr.No.14/2023 on 01.02.2023.

4. Gist of the complaint averments reveal that when the complainant was in the police station on 01.02.2023 at about 1.30 p.m., he received a credible information that in Kaballayyana Doddi village, Uyyamballi Hobli, Mugguru Dakhle, one Mahadeva @ Jubadi S/o Gundaiah had grown ganja plants in the backyard of his house. The said information was reported to the higher police officials and thereafter the complainant formed a team comprising of himself, his sub staff, gazetted officer for the intended raid and all of them proceeded to the Kabbalayyana Doddi village and as per the information they traced the house of the petitioner and raided the house of the petitioner and noticed in the back yard that ganja plants were grown. All the ganja plants were uprooted and weighed. It was weighed to 2 kg 740 grams and there was no licence or permit for growing the ganja plants in the backyard of the petitioner's house and therefore treated as illegal and seized the same and took the petitioner to custody and handed over him to the Station House Officer of Kodihalli police station.

5. Based on the report, the Station House Officer registered a case, arrested the petitioner and sent him to the judicial custody. The investigation is under progress. In the meantime the petitioner approached the District Court for grant of bail in Crl.Mis.No.99/2023 and the same was dismissed by order dated 16.02.2023. Thereafter, petitioner is before this Court.

6. Reiterating the grounds urged in the petition, Smt. Divya, learned counsel for the petitioner, vehemently contended that the seized ganja were wet ganja plants and therefore, the weight of the seized ganja will have to be reassessed. She also stated that the roots including the roots of the plants were also weighed and therefore the quantity of the seized ganja should vary. She further contended that since the grown up ganja plants are already seized and the accused is in custody on and from 01.02.2023, continuation of the accused/petitioner in judicial custody is no longer warranted and sought for grant of bail.

7. Per contra, learned High Court Government Pleader after reiterating the grounds urged in the objection statement opposed the bail petition.

8. He further contended that admittedly the seized ganja plants were grown in the backyard of the house of the petitioner and therefore, *per se* the petitioner is guilty of the offence alleged against him and sought for rejection of the bail petition.

9. Perused the material on record meticulously in view of the rival contention of the parties. On such perusal of the material on record, it is seen that based on the credible information, head of the raid party has raided the house of the petitioner and uprooted the ganja plants and the same were weighing 2 kg 740 grams.

10. Admittedly, the petitioner did not possess any licence to grow ganja plants in the backyard of his house. Since the petitioner is taken to custody on the spot and he is in judicial custody on and from 01.02.2023 and seized ganja is termed as intermediary quantity in view of the same being

weighing 2 kgs 740 grams, the case would fall under Section 20(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and therefore, the power of this Court under Section 439 of Cr.P.C., is not taken away and Section 37 of the Narcotic Drugs and Psychotropic Substances Act has no application to the facts of the case.

11. Taking note of the fact that the petitioner is in custody and ganja plants grown in the back yard of the house of petitioner is already seized, continuation of the accused/petitioner is not warranted in the case on hand, in view of the fact that the petitioner has no criminal antecedents. Further the apprehension of the prosecution can be met with by imposing suitable and stringent conditions:

Accordingly, following order is passed:

ORDER

The criminal petition is allowed, subject to the following conditions:

(1) The Petitioner shall be enlarged on bail on executing a personal bond in a sum of Rs.1,00,000/- [Rupees one lakhs only] with

two sureties for the likesum to the satisfaction of the learned Trial Judge.

(2) The petitioner shall not directly or indirectly tamper the prosecution evidence or hamper the investigation process in any manner.

(3) Petitioner shall not leave the jurisdiction of Ramanagara District without prior permission.

(4) Petitioner shall attend the court regularly.

(5) The petitioner shall not indulge in similar offences.

Violation of any of the above conditions, would entitle the prosecution to seek for cancellation of bail.

Ordered accordingly.

Sd/-
JUDGE

MR
List No.: 1 Sl No.: 74