CRL.P No. 821 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL PETITION NO. 821 OF 2023

BETWEEN:

MALLIKARJUNACHARI,
S/O. MUNACHARI,
AGED ABOUT 30 YEARS,
NERALEMARADAHALLI,
SIDALI HOBLI,
SIDLAGHATTA TALUK,
CHIKKABALLAPURA,
KARNATAKA - 562 104.

...PETITIONER

(BY MISS. KEERTHANA NAGARAJ, ADVOCATE)

AND:

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

THE STATE OF KARNATAKA,
BY THE EXCISE INSPECTOR,
SHIDLAGHATTA RANGE,
CHIKKABALLAPURA,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI VINAYAKA V.S, HCGP)

THIS CRL.P IS FILED U/S.438 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CR.NO.20/2021-22/1207IE/120707 REGISTERED

BY THE EXCISE INSPECTOR, SHIDLAGHATTA RANGE, CHIKKABALLAPURA FOR THE ALLEGED OFFNECE P/U/S.20(A)(B) OF NDPS ACT PENDING ON THE FILE OF THE Ld. PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA.THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA.

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

ORDER

Heard Miss.Keerthana Nagaraj, learned counsel for the petitioner and learned High Court Government Pleader for the respondent-State.

2. Petition is filed under Section 438 of Cr.P.C with the following prayer:

> *"Wherefore, the petitioner No.1 named above humbly prays that this Hon'ble Court may be pleased to pass an order, directing the I.O to release the petitioner No.1 on anticipatory bail, in the event of his arrest in Crime No.20/2021-22/1207IE/120707 registered by the Excise Inspector, Shidlaghatta Range, Chikkaballapura for the*

alleged o/p/u/S.20(A) and 20(B) of the NDPS Act, pending on the file of the Learned Principal District and Sessions Judge, Chikkaballapura and grant such other reliefs as the Hon'ble Court deems fit to grant in the facts and circumstances of the case to meet the ends of justice."

3. Brief facts of the case are as under:

Excise Inspector, Shidlaghatta has received credible information that somebody has grown ganja plants in the land belonging to Subbachari of Neralemaradahalli, Sadali Hobli, Shidlaghatta Taluk, on 08.09.2021 at about 2.30.p.m. Accordingly, he formed a raid team, and all of them proceeded towards the land where the ganja is grown. On visiting the said place, the raid team noticed that in the middle of chilly plants, 35 ganja plants were grown. With the help of panchas, in the presence of gazetted officer, the ganja plants were uprooted and during the raid, the ganja plants weighed 11kg 700 grams.

Subbachari was arrested, and based on the information, the investigation agency came to know that it was the petitioner who had grown the ganja plants on the land belonging to the second accused-Subbachari. After seizing the ganja plants and treating it as illegal, the police registered the case in Cr.No.20/2021-22 and filed the charge sheet. The petitioner is shown as absconding accused. The absconding accused despite the petitioner is being not available to the investigation agency.

4. The attempt made by the petitioner to obtain an order of grant of anticipatory bail is turned down by the learned Principal District and Sessions Judge, Chikkaballapura, in Crl.Misc.No.711/2022 dated 30.09.2022. Thereafter, the petitioner is before this Court.

5. Reiterating the grounds urged in the petition, Miss.Keerthana Nagaraj, learned counsel appearing for the accused/petitioner, vehemently contended that the petitioner is innocent of the offence alleged against him and is no way connected with the incident, and based on

the statement of the 2nd accused-Subbachari, the present petitioner has been falsely implicated in the case on hand and sought for grant of anticipatory bail.

6. She also argued that the seized ganja being the intermediary quantity, the provisions of Section 37 cannot be pressed into service by the prosecution in the case on hand and sought for grant of anticipatory bail.

7. *Per contra, the* learned High Court Government Pleader reiterating the grounds urged in the objection statement, opposed the grant of bail stating that petitioner is not a law abiding citizen inasmuch as he has been shown as absconding accused in the charge sheet.

8. Perused the material on record meticulously in view of the rival contentions of the parties.

9. On such perusal, it is seen that the raid party was able to seize 35 ganja plants grown in the land belonging to the 2nd accused-Subbachari amidst chilly plants. On inquiry with the 2nd accused, he has revealed

that it is the present petitioner who has stealthily grown the ganja plants in his land and he was not aware of it. The raid party uprooted all 35 ganja plants and made the same, it weighed 11 kg and 700 grams.

10. Admittedly, the seized ganja plants are of intermediary quantity from the date of registration of the case, and the petitioner is not available to the investigation agency, which was constrained to file a charge sheet showing the present petitioner as an absconding accused.

11. According to the petitioner, he is a goldsmith by profession, and therefore, he has no nexus whatsoever with the incident. However, the fact that he has taken the land from the co-accused for the purpose of agriculture is an established statement made by the co-accused.

12. Suffice to say that the abscondance of present petitioner from the date of the offence till date, is itself sufficient to deny the grant of anticipatory bail, more so,

having regard to the nature of the offence alleged against the petitioner.

13. Further, the material on record also discloses that coercive steps were taken against the petitioner by the learned Special judge to secure his presence. All these factors are viewed positively, this Court is of the considered opinion that the petitioner has not made out any grounds whatsoever nexus good grounds to accept the request for grant of anticipatory bail. It is always open for the petitioner to surrender before the Court and apply for the grant of regular bail reserving such liberty for the petitioner, following order is passed:

ORDER

Petition is ***dismissed.***

However, if the petitioner surrenders before the trial Court and seeks for grant of bail by filing necessary application, it is open for the learned Sessions Judge to deal with the said application in accordance with law

uninfluenced by the observation made by this Court in this order.

Sd/-
JUDGE

rv
List No.: 1 Sl No.: 63
CT: ABS