

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.3073 OF 2020

C/W

CRIMINAL PETITION No. 3213 OF 2020

C/W

CRIMINAL PETITION No.3383 OF 2020

IN CRL.P. No. 3073/2020

BETWEEN:

Tasleem N.P @
Muhammed Thaslim N P ,
S/o Hameed K M,
Aged about 29 years,
No G1, Sri Sai Residency,
Mahadeswarapuram,
BTM IInd Stage,
Bengaluru – 560 076.

Permanent Address;

Nafeesa Mazil,
Ettikkulam, Ramanthali,
Kannur, Kerala – 670 308.

...Petitioner

(By Smt. Sofia, Advocate for
Sri. Kamaluddin, Advocate)

AND;

State of Karnataka,
By Hulimavu Nagar Police Station,
Represented By State Public Prosecutor,

High Court of Karnataka,
Bengaluru – 560 001.

...Respondent

(By Smt. K.P. Yashodha, HCGP)

This Criminal Petition is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.110/2020 of Hulimavu Police Station, Bengaluru City for the offence punishable under Sections 20(b), 8(c), 22(c) of NDPS ACT.

IN CRL.P. No. 3213/2020

BETWEEN:

Haseeb K.V.
S/o Muhammad Ali
Aged about 25 years,
Apricot Shop,
Gottiere, Banerghatta Road,
Bengaluru-560 093.

Permanent Address
K.E.Kadappurath
Veettil, Mattool North,
Kannur, Kerala - 670 325

...Petitioner

(By Smt. Sofia, Advocate for
Sri. Kamaluddin, Advocate)

AND;

State of Karnataka,
By Hulimavu Nagar
Police Station,
Represented by State Public Prosecutor,
High Court of Karnataka,
Bengaluru – 560 001.

...Respondent

(By Smt. K.P. Yashodha, HCGP)

This Criminal Petition is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.110/2020 of Hulimavu Police Station, Bengaluru City for the offence punishable under Sections 20(b), 8(c), 22(c) of NDPS ACT.

IN CRL.P. No. 3383/2020

BETWEEN:

Rasique Ali P.,
S/o Ismalutty T.,
Aged about 25 years,
R/o Parambil House,
Koolimadu, Pazhur P.O,
Kozhikode, Kerala- 673 661.

...Petitioner

(By Smt. Vishruti Vijay, Advocate for
Sri. Laksha Kalappa B., Advocate)

AND;

State of Karnataka,
By Hulimavu Police Station,
Meenakshi Temple Road,
Main Bus Stop, Hulimavu,
Bengaluru, Karnataka-560 076.
Rep by SPP, High Court Building,
Bengaluru-560001.

...Respondent

(By Smt. K.P. Yashodha, HCGP)

This Criminal Petition is filed under Section 439 Cr.P.C praying to enlarge the petitioner on bail in Cr.No.110/2020 of Hulimavu Police Station, Bengaluru City for the offence punishable under Sections 20(b), 8(c), 22(b), 22(c) of NDPS ACT.

These Criminal Petitions having been heard and reserved on 23.09.2020, coming on for pronouncement this

day, through video conferencing the court pronounced the following:

ORDER

These three criminal petitions are disposed of by a common order as they arise from same crime number. The petitioner in CrI.P.No. 3073/2020 is accused No.1. Accused No.4 is the petitioner in CrI.P.No. 3213/2020. The petitioner in CrI.P.No. 3383/2020 is accused No.5. All these petitioners have been implicated in Cr.No. 110/2020 in relation to offences punishable under sections 8(c), 22(b) and 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard Smt. Sofia and Smt. Vishruti Vijay, learned counsel appearing for the petitioners and Smt. K.P.Yashodha, learned HCGP for all the respondents.

3. The prosecution case is that the Police Inspector received credible information on 11.6.2020 that about six persons living in a house bearing No. 65, Kapila Cross Road, Behind Maruthi Dental College, Vinayaka Layout, Hulimavu,

were possessing narcotic substances such as ganja, MDMA, ecstasy tablets and LSD strips and they were about to sell those substances. Immediately the Police Inspector conducted a raid on that house, seized the substances and arrested those persons.

4. Learned counsel for the petitioners in all the cases have argued that the police did not seize any contraband substance from the conscious possession of the petitioners. The prosecution has not yet obtained the qualitative and quantitative report from the FSL, it is mandatory that according to Standing Instruction 1/1988, the report must be obtained within 15 days from the date of sending the narcotic drug to the FSL. There is no compliance of Standing Instructions. For this reason, section 37 of the NDPS Act cannot be invoked. They also argued that the police officer did not register FIR soon after receiving the credible information. They proceeded to the spot to conduct search without registering FIR. Therefore, the whole seizure is bad in law and for this reason, the seizure panchanama cannot be looked into for any purpose. Relying upon

number of authorities in support of their case, they submitted that all the petitions must be allowed and the petitioners enlarged on bail.

5. Learned High Court Government Pleader argued that there is no infraction of procedure. The petitioners and other accused were also staying in the house where the raid was conducted. The contraband substances were found inside the house and therefore the burden is on the accused to prove that they were not aware of the contents of the bag. She referred to section 35 of the NDPS Act. She also submitted that the police officer has followed every procedure and the same is disclosed in the seizure mahazar. The seizure was according to law. She further submitted that the seized substance was sent to FSL within time and the reason for delay in receiving the report is due to restriction imposed for controlling infectious pandemic Covid-19. Moreover at the stage of deciding the bail application, this aspect cannot be given so much of importance because in the seizure mahazar, it is clearly stated about the quantity and the nature of the substances

seized from the possession of the accused. She referred to the order passed by the co-ordinate bench of this court in CrI. P. 1298/2020 to argue that non-compliance of the Standing Instructions is not a ground for granting bail. She submitted that the coordinate bench refused bail by referring to the judgment of the Supreme Court in the case of **Superintendent, Narcotics Control Bureau, Chennai, vs R. Paulsamy [(2000) 9 SCC 549]**. She argued for dismissing the petitions.

6. Since the counsel for the petitioners highlighted the point that the contraband substances were not seized from the conscious possession of the accused, it is necessary to state that the word 'conscious' is related with the mental state of a person and his knowledge about something. It does not take the attributes of physical possession. If a bag containing contraband is found in the house of the accused, it goes without saying that the first impression of an ordinary prudent man is that the bag belongs to the accused and he must be aware of its contents. If he takes a stand that he was not aware of the contents, the burden is on him

to establish it. Thus seen, the learned counsel for the petitioners have made a futile argument that there was no seizure from the conscious possession of the petitioners.

7. The seizure panchanama discloses recording of reasons by the police officer for not being able to apply for search warrant and also compliance of proviso to section 42(1) of the NDPS Act. Panchanama also shows search being made in the presence of a gazetted officer. Therefore there is due compliance of all the requirements envisaged under NDPS Act.

8. Reference may be made to the judgments cited by learned counsel for the petitioners. In ***Ben Okoro vs State of Karnataka [Crl. P. No. 8644/2017]*** bail was granted to the accused taking note of the fact that the qualitative and quantitative report was not obtained within 15 days as per Standing Instruction No. 1/1988. In the case of ***Kelsi Katte Mahammed Shakir vs The Superintendent of Customs, Air Intelligence Unit [Criminal Petition No. 5402/2018]*** also, this court was inclined to grant bail noticing the fact

that the FSL report was not obtained within fifteen days. But, in CrI.P.No.1298/2020 (**Nonso Joachin Udedike vs State of Karnataka decided on 9.6.2020**), the judgment of the Supreme Court in **Paulsamy (supra)** has been referred to hold that it is too early to take into account all the formalities to be complied with for the purpose of deciding a bail application. Therefore, if the investigation officer could not obtain the FSL report within 15 days, it is not so significant that too when there are other materials indicating existence of prima facie materials about the involvement of the petitioners in commission of offences.

9. Learned counsel for the petitioners have placed reliance on the judgment in the case of **Lalita Kumari vs Government of Uttar Pradesh and Others [(2014) 2 SCC 1]** in support of their argument that the seizure panchanama conducted by the appellants without registration of FIR was illegal.

10. Examined whether the ratio in **Lalita Kumari (supra)** is applicable in a situation where a police officer only

receives a credible or secret information about an offence which is about to be committed, I may with great respect observe that the primary duty of police is to prevent an offence from happening; immediately after receiving the information, a police officer has to proceed to spot for averting the crime, and taking such other measures as the situation demands. In ***Lalita Kumari (supra)***, the focus is on the duty of Station House Officer once he receives information about commission of offence, that means the information should disclose a crime being already committed. And in such a situation, if the crime is cognizable, the Station House Officer is bound to register FIR without wasting time. But the secret information does not disclose a crime being committed, it only alerts the police about a crime which is about to occur. The police officer who receives such information has to proceed to spot for preventing the crime or to take such other measures that the situation demands. Thereafter if he prepares a report, it may be treated as FIR for further course of action. Sometimes, offences do take place in the presence of the police officer. In

such a situation, his first duty is to arrest the accused and collect the evidence, and not registration of FIR.

11. In the case on hand what the police officer received was a report about likelihood of offences under NDPS Act being committed, the informant only suspected possession of contraband substances, regarding which no FIR could be registered without ascertaining the truth in the information. The seizure panchanama discloses that the petitioners and other accused possessed contraband substance for the purpose of selling them. He seized the substances and made a report of the same. No error can be found in it.

12. The learned counsel for the petitioners have placed reliance on some decisions of the Supreme Court namely ***Gangadhar @ Gangaram vs State of Madhya Pradesh (Criminal Appeal No. 504/2020); Narcotics Control Bureau, Jodhpur vs Murlidhar Soni and Others [(2004) 5 SCC 151]; and Gian Chand and Others vs State of Haryana [(2013) 14 SCC 420]***. All these decisions

cannot be made applicable for, they are all post conviction appeals; the yardstick to be applied for deciding a bail application is not same as assessing the whole case after conclusion of trial.

13. The High Court of Delhi may have granted bail to the accused as may be seen in its decisions in the case of ***Harpreet Singh Bahad vs DRI, and Kamaljeet Singh vs H.K.Pandey, Intelligence Officer, NCB***, that the counsel for petitioner in CrI. P. No. 3383/2020 has cited. In these cases, the decision to grant bail was based on given circumstances. Here in these petitions, there are prima materials against the petitioner, section 37 of the NDPS Act is very much attracted. Therefore, the petitions are dismissed.

**Sd/-
JUDGE**

ckl