

Karnataka High Court

Nemappa S/O Chandrappa vs The State Of Karnataka Through on 11 May, 2023

Bench: Ramachandra D. Huddar

- 1 -

CRL.P No. 200470 of 2023

IN THE HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH

DATED THIS THE 11TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR  
CRIMINAL PETITION NO. 200470 OF 2023

BETWEEN:

NEMAPPA S/O CHANDRAPPA  
AGED ABOUT : 60 YEARS, OCC : COOLIE,  
R/AT GOREBAL, TQ. LINGASUGUR,  
DIST. RAICHUR.

...PETITIONER

(BY SRI. MAHANTESH PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA  
THROUGH R/BY ADDL. SPP,  
HIGH COURT OF KARNATAKA, KALABURAGI BENCH,

(THROUGH RAICHUR SUB-DIVISION,  
LINGASUGUR EXCISE RANGE)

...RESPONDENT

Digitally  
signed by  
SACHIN  
Location:  
High  
Court of  
Karnataka

(BY SRI GURURAJ V.HASILKAR, ADVOCATE)

THIS CRL.P. FILED U/S. 439 OF CR.P.C PRAYING THAT  
THIS HONOURABLE COURT MAY BE PLEASED TO ALLOW THE  
PETITION THEREBY ENLARGE THE PETITIONER ON BAIL IN  
CRIME NO. 39/2022-23/2706SIE1/270606 OF LINGASUGUR  
POLICE STATION, DISTRICT RAICHUR, FOR THE OFFENCES  
PUNISHABLE U/SEC. 20(B)(II)(B), 20(A), 25, 8(B), 8(C) OF  
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT,  
1985 PENDING BEFORE THE PRINCIPAL DISTRICT AND  
SESSIONS COURT SPECIAL COURT FOR NDPS ACT, AT

- 2 -

CRL.P No. 200470 of 2023

RAICHUR. THE PRL. SESSIONS JUDGE, AT RAICHUR HAS  
REJECTED THE BAIL PETITION IN SPL.FIR.NDPS NO. 03/2023  
ON 19.04.2023.COPY SERVED ON STATE.POST CRL.P. BEFORE  
HONOURABLE SJ FOR ORDERS.RA-28.04.2023.

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

ORDER

The petitioner/accused has filed the petition under Section 439 of Code of Criminal Procedure to enlarge him on regular bail in Crime No.39/2022-23/2706SIE1/270606 of Raichur Sub Division, Lingasugur Excise Range, registered for the offence punishable under Section 20(b)(ii)(B), 20(a), 25, 8(b) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act).

2. Brief facts of the prosecution case as per FIR are as under;

That a complaint came to be filed by the Excise Sub- Inspector, Lingasugur Excise Range, Lingasugur alleging that, on 29.03.2023 at about 12.45 p.m. as he was engaged in Vidhana Sabha Election duties of 2023, he received an information that in Gorebai Thanda No.1 of Lingasugur Taluk one Nemappa S/o Chandya i.e., the present petitioner owns landed property bearing Sy.No.60, has grown the ganja plants.

CRL.P No. 200470 of 2023 On receipt of the said information, he called upon his staff by name Malingaraya and Rajendra Mane and went to the said place at about 1.15 p.m. and reached Gorebal Village Panchayat. He collected the staff of panchayat as panchas by name Sri Basayya being the Secretary and the bill collector by name Hanumanth. He requested them to act as panchas. They agreed for the same. Thereafter, at about 1.30 p.m. they went to the said survey number and noticed that in a landed property to the said petitioner/accused measuring 3 acres 26 guntas, there was a growing of a ganja plant. The person who was there was trying to run away from the place and he was caught hold and was enquired into with his name and address.

It is noticed that the said petitioner in the said landed property has grown the ganja plants measuring in all 7 kgs. 225 grams being wet ganja plant having height of 4 to 6 feet containing seeds and flowers. In all there were four ganja plants. The said ganja plants were seized as per the procedure stated under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and a crime was registered in FIR No.39/2022-23/2706SIE1/270606 of Raichur Sub Division, Lingasuguru Excise Range, for the aforesaid offences.

CRL.P No. 200470 of 2023 Now the petitioner is seeking bail on the following grounds in the said crime.

3. The learned counsel for petitioner submits that the petitioner is innocent and he has not committed any crime. He has been falsely implicated in this case. The police have not visited the

land or seized any wet ganja trees from the possession of the petitioner. The alleged recovery made by the Investigating Officer in the land is dry land as per the panchanama is false. It is denied that 7 kg. 225 grams of ganja have been seized which is not a commercial quantity. He has been falsely implicated in this case. In collusion with the local police a false case has been registered against the present petitioner. The story of the prosecution case is of serious doubt. If the seizure is contraband if proved even for the sake of argument, there is no truth in the case of the prosecution. The mandatory provisions of Section 42 to 50 of the NDPS Act have not been properly followed by the Investigating Officer. The benefit has to given to the present petitioner as the petitioner is aged 60 years being coming under the provision to Section 437 of Cr.P.C. He is ready to obey the conditions CRL.P No. 200470 of 2023 imposed by this court. Therefore, amongst other grounds, it is prayed to grant him bail.

4. Learned High Court Government Pleader resisted the bail petition by filing a statement of objection on behalf of respondent/State contending inter alia reiterating the contents of the complaint in his objections. In addition to that, it is contended that, the offences are non bailable offence. The offence is under the special enactment and hence as a matter, he is not entitled for bail. Seizure have been proved in this case. Ganja plants have been seized from the possession of the accused. In all, 7 kgs. 225 grams of ganja have been seized from the possession of the accused. He is the owner of the land. If he is released on bail he will hamper the investigation and also it gives wrong message to the society at large. Hence, amongst other grounds, it is prayed to dismiss the petition.

5. Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent/State.

6. On perusal of the complaint as well as the other records placed by the prosecution, it do reveal that, in CRL.P No. 200470 of 2023 Sy.No.60 of Gorebal Village the petitioner has grown the ganja plants. To show that the said Sy.No.60 belongs to the accused/petitioner, no documents are produced by the prosecution. Further the total ganja weighing 7.225 grams have been seized as per the prosecution case. It is wet ganja. If as it is wet ganja, it cannot be stated that in all it contains the ganja weighing 7 kgs. 225 grams. After becoming dry, the weight of the ganja may be reduced. According to the prosecution the said ganja plants were containing seeds and flowers. Evidently, the said ganja was seized is not of a commercial quantity.

7. Growing of ganja, as per the provisions of the NDPS Act is an offence. Whether is it the petitioner who is responsible for growing the ganja or otherwise, it is a matter of trial. Based upon the information being furnished, the Excise Inspector visited the said place and seized the said ganja plants. No documents have been produced by the prosecution to show the involvement of the present petitioner in the crime.

8. It is submitted by the counsel for the petitioner that, the petitioner has no criminal antecedents. Even it is conceded by the prosecution that except, this case, there are CRL.P No. 200470 of 2023 no other case registered against the petitioner. To know that whether the said wet ganja really weights more than 7 kg. 225 grams, it is a matter of trial. The sample has to be sent to the FSL for

the purpose of scientific examination.

9. It is submitted that the petitioner is aged more than 60 years and he is coming under the provision to Section 437 of Cr.P.C. This fact is also not denied by the prosecution.

10. The law is that bail is a rule, rejection is an exception. Granting of bail does not amount acquittal and rejection does not amount to conviction.

11. Law with regard to grant of bail is very much settled in the judgment of the Hon'ble Apex Court in the case of Dattaram Singh v. State of Uttar Pradesh reported in (2018) 3 SCC 22.

"A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant CRL.P No. 200470 of 2023 of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society." Yet in another judgment of the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, which makes it mandatory that in any case where the offence is punishable with imprisonment for a term which may extend to 7 years, the accused may not be automatically arrested and the Magistrate may not authorize the detention casually and mechanically.

12. On perusal of the statement of objection filed by the prosecution, they are the objections being filed by the prosecution to every bail petition. Petitioner has undertaken to abide by the conditions to be imposed by the Court. Objections raised by the prosecution could be satisfied by imposing strict conditions on him while granting bail. Hence, if the petitioner is granted bail, by imposing conditions, it would meet the ends of CRL.P No. 200470 of 2023 justice. Therefore, it is held that petitioner is entitled for bail with conditions. Resultantly, I pass the following :

ORDER The bail petition filed by the petitioner under Section 439 of Cr.P.C is allowed.

Petitioner is directed to be enlarged on bail in Crime No.39/2022-23/2706SIE1/270606 of Raichur Sub Division, Lingasugur Excise Range, registered for the offence punishable under Section 20(b)(ii)(B), 20(a), 25, 8(b) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, subject to following;

#### CONDITIONS

1. The petitioner shall execute a personal bond for a sum of `50,000/- with two sureties for like sum to the satisfaction of the jurisdictional Court;

2. The petitioner shall not threaten or tamper the prosecution witnesses;
3. The petitioner shall mark his attendance before the respondent's police once in 15 days day between 8.00 a.m. and 4.00 p.m. and sign in the register maintained by the Investigating Officer to that effect;

- 10 -

CRL.P No. 200470 of 2023

4. The petitioner shall not involve in similar offence;
5. The petitioner shall appear before the Investigating Officer as and when called upon for the purpose of further investigation and co- operate for investigation.

Violation of any of these conditions would entail cancellation of bail.

Sd/-

JUDGE SN