

Govind S/O. Bhawarlal Patel vs The State Of Karnataka on 7 February, 2025

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NC: 2025:KHC-D:2482
CRL.P No. 103795 of 2024
C/W CRL.P No. 103663 of 2024
CRL.P No. 103667 of 2024

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 7TH DAY OF FEBRUARY, 2025

BEFORE
THE HON'BLE MR. JUSTICE C M JOSHI

CRIMINAL PETITION NO.103795/2024
(439(Cr.PC)/483(BNSS))
C/W

CRIMINAL PETITION NO.103663/2024
CRIMINAL PETITION NO.103667/2024

IN CRL.P NO.103795/2024:

BETWEEN:

OM PRAKASH S/O VEERAMARAM,
AGE: 24 YEARS, OCC: BUSINESSMAN,
R/AT. SHALANI PARK, GADAG ROAD,
TQ. HUBBALLI,
DIST. DHARWAD-580 020.

Digitally
signed by
LUCYGRACE

...PETITIONER

LUCYGRACE Date:

2025.02.11

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0800

(BY SRI GOURI SHANKAR MOT, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
TOWN POLICE STATION,
HUBBALLI,

REP. BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,

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DHARWAD BENCH,
DHARWAD.

...RESPONDENT

(BY SRI JAIRAM SIDDI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. (483 OF BNSS), PRAYING TO ENLARGE THE PETITIONER/ACCUSED NO.1 ON BAIL IN CRIME NO.78/2024 OF HUBBALLI TOWN POLICE STATION, PENDING ON THE FILE OF 1ST JMFC COURT, HUBBALLI, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 20(b)(ii)(A) OF THE NDPS ACT, 1985, AND SECTIONS 318(4), 336(3), 340(2), 111(3) AND 316(4) OF BNS, 2023.

IN CRL.P NO.103663/2024:

BETWEEN:

GOVIND S/O BHAWARLAL PATEL,
AGE: 21 YEARS, OCC: BUSINESS,
R/AT. OPPOSITE CHURCH, NATRAJ COLONY,
SINDHNUR,
DIST. RAICHUR-584 128.

...PETITIONER

(BY SRI KIRAN JAWALI, SENIOR COUNSEL, FOR
SRI ZANZA SHAILESH JOSHI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
TOWN POLICE STATION,
HUBBALLI,
REP. BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH,
DHARWAD.

...RESPONDENT

(BY SRI JAIRAM SIDDI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C. (U/SEC. 482 OF BNSS, 2023) PRAYING TO GRANT

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ANTICIPATORY BAIL DIRECTING THE RESPONDENT POLICE TO
RELEASE THE PETITIONER/ACCUSED NO.4 ON BAIL IN THE
EVENT OF HIS ARREST AND ENLARGE HIM ON BAIL IN CRIME
NO.78/2024 OF HUBBALLI TOWN POLICE STATION, PENDING
ON THE FILE OF 1ST JMFC COURT, HUBBALLI, FOR THE
OFFENCES PUNISHABLE UNDER SECTIONS 20(b)(ii)(A) OF THE
NDPS ACT, 1985 AND SECTIONS 318(4), 336(3), 340(2),
111(3) AND 316(4) OF BNS, 2023.

IN CRL.P NO.103667/2024:

BETWEEN:

RAMESH S/O CHUTRA RAM GUDAMALINI,
AGE: MAJOR, OCC: BUSINESS,
R/AT. BOND VILLAGE, TQ. GUDAMALINI,
BARMER,
RAJASTHAN.

...PETITIONER

(BY SRI GOURI SHANKAR MOT, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
TOWN POLICE STATION,
HUBBALLI,
REP. BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH,
DHARWAD.

...RESPONDENT

(BY SRI JAIRAM SIDDI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439
OF CR.P.C. (U/SEC. 483 OF BNSS, 2023), PRAYING TO
ENLARGE THE PETITIONER/ACCUSED NO.3 ON BAIL IN CRIME
NO.78/2024 OF HUBBALLI TOWN POLICE STATION, PENDING
ON THE FILE OF 1ST JMFC COURT, HUBBALLI, FOR THE
OFFENCES PUNISHABLE UNDER SECTIONS 20(b)(ii)(A) OF THE

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NDPS ACT, 1985, AND SECTIONS 318(4), 336(3), 340(2),

111(3) AND 316(4) OF BNS, 2023.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 29.01.2025 AND COMING ON FOR
'PRONOUNCEMENT' THIS DAY, THE COURT MADE THE
FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE C M JOSHI

CAV ORDER

(PER: THE HON'BLE MR. JUSTICE C.M. JOSHI)

1. These petitions are filed under Sections 482 and 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, (for short 'BNSS') by accused No.1, 3 and 4 in Crime No.78/2024 of Hubli Town Police Station registered for the offences punishable under Section 20(b)(ii)A of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'N.D.P.S. Act') and Sections 318(4), 336(3), 340(2), 111(3), 316(4) of the Bharatiya Nyaya Sanhita, 2023, (for short 'BNS'), seeking regular bail as well as anticipatory bail.

2. The factual matrix of the case is as below:

(a) The P.S.I. of Hubli Town Police Station - Maruti R., lodged complaint stating that on 30.07.2024 while he was on duty, he received a credible information that at about 7.00

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p.m., a person would come in a White KIA Sonnet Car No.RJ-

39/CA-6198 near Bogi-Bogi Hotel, adjacent to Railway Station,

either to sell or purchase narcotic drug i.e., Ganja. The said complaint was registered in Crime No.78/2024. Thereafter, the Police Inspector of Hubli Town Police Station (I.O.) took up the investigation, secured two panchas and after informing them about the raid to be conducted and following the required procedure, proceeded to the spot. At about 8.25 p.m., while the raiding party was watching the place, the said Car came and on intercepting it, the Driver of the Car was questioned and he disclosed his name to be Omprakash (A1) and he was informed of the credible information received by the I.O., after informing him that the raiding party had made a self-search. He admitted that he was possessing Ganja and informed that it is kept in the Car. Accordingly, the accused was arrested and the Ganja in the Car was examined and it was found that the Ganja was weighing 643 grams. Thereafter, at the option of the accused No.1, a Gazetted Officer (Assistant Commissioner of Police, South) was secured and body search was conducted. On interrogating him, the accused No.1 led the police to his house at Railway Colony and disclosed about 245 grams of

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Ganja, which was kept in the cupboard. At the time of search, cash of Rs.96,50,000/- was secured and the same was seized under a Mahazar. Apart from the cash, several Rubber Seals of various business establishments, Bank Swipe Machines, Aadhar Cards, Cheque-Books, Pass-Books, about 30 ATM Cards of

several Banks, Bond-Papers, PAN-Cards were also seized from his house. Allegedly, the accused No.1 had also disclosed that apart from drug peddling, he was also involved in Hawala transactions and 9 other accused were involved in the Crime.

(b) On the basis of such information, accused No.6 - Ratna Ram was arrested on 04.08.2024 and his statement was also recorded. Thereafter, it came to light that accused No.4 - Govind (petitioner in Crl.P. No.103663/2024) was a Clerk in the Commission Agency business of one Vijaykumar (CW 15) and he had represented accused Nos.1 and 3 that the Bank Account of Vijaykumar was a 'tax free' account and any deposit made to it and withdrawal would not be known to Vijaykumar and accordingly, a sum of Rs.1,05,00,000/- was transferred to the said account; and by misrepresenting the said Vijaykumar that some purchaser of paddy had transferred the money, but since they had no stock of paddy the said amount has to be

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refunded, got issued the Cheques and the money was withdrawn and paid to accused No.1. The said amount to the tune of Rs.96,50,000/- was the money recovered from the house of accused No.1.

(c) The Investigating Officer filed charge-sheet against the accused Nos.1 and 6 and showed remaining accused as

absconding. As such, a non-bailable warrant was sought by him against the absconding accused. On 01.10.2024, accused No.3 - Ramesh Kumar was traced in Rajasthan and he was arrested and brought to Hubli. It was alleged that in his voluntary statement he admitted that he is involved in Hawala transactions by conniving with accused Nos.1, 6 and several others and his mobile phone was seized under a Mahazar.

(d) The charge-sheet filed by the Investigating Officer alleges that the accused No.1 got information from accused No.3 and after having acquaintance with accused NO.5, obtained the details of the Aadhar Cards of the persons, who used to come for getting the new PAN-Cards and by changing the mobile numbers attached to the Aadhar Cards, and linking his own mobile number, got the updated Aadhar Cards, and

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then created bogus PAN-Cards and downloaded them and opened fictitious Bank Accounts. It is alleged that all these accounts were handled by accused Nos.1 and 3. Accused No.1 got acquaintance with accused Nos.7 and 8 through accused No.4 and they together, through accused No.6 were involved in Hawala transactions. They wanted a 'tax free' account and accused No.1 contacted accused No.4, through him, the account of CW15 - Vijaykumar was used by accused No.4. The money recovered from accused No.1 at his house is part of the

Hawala transactions, which was credited to the account of CW15 - Vijayakumar and encashed by accused No.4 under the guise that it was the money for purchase of the paddy. Therefore, it is alleged that accused Nos.1 to 9 have committed the offences punishable under Section 20(b)(ii)A of N.D.P.S. Act, and Sections 318(4), 336(3), 340(2), 111(3), 316(4) of the BNS.

3. Heard the arguments by learned Senior Counsel Sri Kiran Jawali appearing for the petitioners and the learned High Court Government Pleader appearing for respondent - State.

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a) The learned Senior Counsel for the petitioners contended that the petitioners are falsely implicated in the case; the provisions of the NDPS Act are not attracted; even if attracted it is for small quantity; the petitioners are ready and willing to abide by any conditions. He argued that the provisions of Sec 111 of the BNS are not at all attracted to the case on hand.

b) Per contra, the learned HGCP argued that the investigation is still in progress and a provisional charge sheet is filed by the Investigating Officer. It is submitted that if the accused are granted bail, they may tamper the prosecution witnesses, indulge in similar offences and destroy the evidence.

Analysis and Conclusions:

4. In Crl.P. No.103795/2024 (filed under Section 483 of BNS) the accused No.1 contend that the quantity of the Narcotic substance seized allegedly from the custody of the petitioner is of small quantity and therefore, the rigor of Section 37 of the N.D.P.S. Act is not applicable. It is submitted that the Ganja was not seen on the person of accused No.1, but it was found in the car. Thereafter, the accused led the I.O. to

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his house, where, certain documents, cash were seized with another small quantity of Ganja. It is pointed out that the requirements of Section 50 of the N.D.P.S. Act are not met with by the I.O. and therefore, the allegations made against the accused No.1 are not sustainable in law. It is contended that the prosecution has not placed any material on record to bring an offence into the four corners of organized crime defined under Section 111 of the BNS. Accused No.1 is not facing any other criminal case and therefore, invoking of the provisions of Section 111 of BNS is not sustainable in law. Hence, the petitioner being ready and willing to abide by any conditions that may be imposed by the Court and to co-operate for investigation, he may be enlarged on regular bail.

5. The accused No.4 - Govind, who is the petitioner in Crl.P.No.103663/2024 (filed under Section 482 of BNSS)

contends that he is innocent of the alleged offences and he also does not face any other charge-sheet which is pending precedent the ten years of the FIR in the present case and as such, the provisions of Section 111 of the BNS are not applicable. He contends that only on the basis of the voluntary

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statement of the other accused, his name is included in the charge-sheet. There is no material against this accused and a non-bailable warrant has been issued by the special Court. There being no allegations against the petitioner for any of the provisions under the N.D.P.S. Act, there was no need for a non-bailable warrant being issued against him. Therefore, it is contended that there being non-compliance of the provisions of the N.D.P.S. Act, he is apprehending an illegal arrest and as such, he may be granted anticipatory bail with suitable conditions.

6. The petitioner in Crl.P. No.103667/2024 (filed under Section 483 of BNS), who is accused No.3 - Ramesh contends that he has been arrested on the basis of a non-bailable warrant issued by the Special Court and the allegations made against him are only the basis of the voluntary statement of accused Nos.1 and 6. It is contended that a confession statement recorded under Section 67 of the N.D.P.S. Act is inadmissible and therefore, he could not have been prosecuted

for the offence under N.D.P.S. Act. He also submits that he is not facing any trial or charge-sheet in the preceding ten years and therefore, the provisions of Section 111 of the BNS is not

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applicable. Hence, he being ready and willing to abide by any conditions to be imposed by this Court, he may be enlarged on bail.

7. As per the charge-sheet papers and the objection statement filed by the learned High Court Government Pleader it is the case of the prosecution that a P.S.I. of Hubli Town Police Station, on receipt of credible information lodged a complaint, based on which, a F.I.R. came to be registered and investigation was launched. During investigation the accused No.1 was intercepted in the presence of the raiding party near Bogi-Bogi Hotel. Accused No.1. was found in the car and he was taken into custody, then interrogated and he was given a choice of being searched by a Gazetted Officer, which he opted and accordingly a Senior Police Officer was summoned and in his presence body search was conducted. Evidently, nothing was found on the body of the accused No.1. However, 643 grams of Ganja was found in the car of accused No.1, which was seized under a panchnama. Then, accused No.1 gave a voluntary statement, and in pursuance to it, the raiding party went to the house of the accused, where cash worth

Rs.96,50,000/- and several Swiping Machines, ATM Cards,

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Cheque-Books, Pass-Books, Aadhar Cards, PAN-Cards etc.,

were seized. Therefore, the I.O. came to the conclusion that there is material to show that the accused is involved in Hawala Operations and invoked the other provisions of law.

8. On the basis of voluntary statement of accused No.1, the involvement of all other accused was disclosed and accused No.6 was arrested. Certain seizures were also made at the instance of accused No.6, on the basis of his voluntary statement. Accused Nos.1 and 6, during their custodial interrogation had disclosed the involvement of accused Nos.3, 4, and other accused. The statements of the witnesses including that of CW15 were also recorded. The Bank-Statements of the various accounts were seized and ultimately, the I.O. filed charge-sheet.

9. The above facts and circumstances show that the involvement of accused Nos.3 and 4 is solely based on the voluntary statement of accused Nos.1 and 6. Evidently, the judgment of the Apex Court in the case of Tofan Singh Vs. State of Tamil Nadu¹ holds that the confessional statement

¹

2020(12) SCR 583

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recorded under Section 67 of N.D.P.S. Act is inadmissible in trial of an offence under N.D.P.S. Act. It is also relevant to note that no discernible recovery had been made from accused No. 3 on the basis of the voluntary statement, except his mobile phone.

10. The role of accused No.1 as alleged by the prosecution is his involvement in the offences under the provisions of N.D.P.S. Act and in Hawala Transactions, which is an organized crime. Evidently, the offence under the provisions of N.D.P.S. Act being for possessing narcotic substance of small quantity, does not attract the provisions of Section 37 of the N.D.P.S. Act.

11. The other allegations are that of criminal breach of trust under Section 316(4), cheating under Section 318(4), forgery for the purpose of cheating under Section 336(3), forged document being used as genuine under Section 340(2) of BNS. Evidently, none of the persons who have been cheated have filed any complaint. Therefore, it is only on the basis of the voluntary statement of accused Nos.1, 3 and 6 that these

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allegations are made. Moreover, these offences are not

punishable with death or imprisonment for life.

12. So far as the offence under Section 111 of the BNS is concerned, the learned Senior Counsel for the petitioners relied on a judgment of the Kerala High Court in the case of Mohammed Rashid Vs. State of Kerala in Bail Application No.5927/2024 dated 13.08.2024. The provisions of Section 111 of the BNS are borrowed from MaCOCA and similar enactments, including KaCOC Act. It is trite law that to conclude that there is an organized crime, and the accused are members of the organized crime Syndicate, it is essential that any one of the members of the Syndicate should be facing atleast three charge-sheets initiated within a period of ten years prior to the crime and which are pending. The perusal of the charge-sheet nowhere indicate that any of the nine accused are facing such charge-sheets within the period of ten years preceding the crime. Therefore, the invoking of the provision under Section 111 of BNS is also prima facie impermissible.

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13. For above reasons, this Court comes to the conclusion that the offences under the provisions of the N.D.P.S. Act are attracted only against accused No.1 and recovery of narcotic substance being for smaller quantity, there is no necessity of his detention in custody. The other offences

are not punishable with death or imprisonment for life and therefore there is no need for custodial detention. Similarly, accused No.3 and 4 cannot be implicated for any of the offences under the provisions of N.D.P.S. Act. His role regarding supply or otherwise of narcotic substance is not alleged. Therefore, his custodial detention is also not necessary.

14. So far as the anticipatory bail of accused No.4 is concerned, evidently his role is only in respect of informing CW15 to issue a Cheque for the refund of Rs.1,05,00,000/- and withdrawing the money from the account. The connections of accused No.4 with the other accused is not independently forthcoming from the charge-sheet except the voluntary statements. The apprehensions of the learned High Court Government Pleader may be met with by imposing suitable conditions. Therefore, this Court finds that the petitions filed for

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regular bail and anticipatory bail deserves to be allowed. Any further detention would only be a pre-trial punishment.

15. In view of the above, the following:

ORDER

i) All the petitions are allowed.

ii) The petitioners in Crl.P. No.103795/2024 and in Crime No.78/2024 of Hubballi town Police Station are ordered to be released on bail subject to the following conditions:

- a) They have to execute personal bond for a sum of Rs.5,00,000/- each, along with two sureties for like sum to the satisfaction of the trial Court/Special Court;
- b) They shall not tamper the prosecution witnesses or evidence either directly or indirectly and shall not have any contact with them in whatsoever manner;

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- c) They shall not leave the jurisdiction of the trial Court without prior permission of that Court;
- d) They shall appear before the Trial Court on all hearing dates, subject to just exceptions that may be permitted by the Trial Court; and
- e) They shall not indulge in any similar offences during the pendency of the case.

iii) In the event of arrest, the petitioner in Crl.P. No.103663/2024, who is accused No.4 in Crime No.78/2024 of Hubballi town Police Station is ordered to be released on bail, subject to the following conditions:

- a) He has to execute personal bond for a sum of Rs.5,00,000/- along with two sureties for like sum to the satisfaction of the Arresting Officer;
- b) He shall not tamper the prosecution witnesses or evidence either directly or indirectly and shall not have any

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- c) He shall not leave the jurisdiction of the trial Court without prior permission of that Court;
- d) He shall appear before the Trial Court on all hearing dates, subject to just exceptions that may be permitted by the Trial Court;
- e) He shall not indulge in any similar offences during the pendency of the case.

Sd/-

(C.M. JOSHI) JUDGE SBS AK