

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.6829 OF 2020

BETWEEN

Kum. Archana Manohar Galrani @
Sanjana Galrani,
Aged about 33 years,
D/o. Manohar Galrani,
R/at No.101, Sai Tejas Shareen,
Indiranagar 100 feet Road,
Behind Peter England Showroom,
Bengaluru-560043.

...Petitioner

(By Sri. Hasmath Pasha, Senior Advocate for
Sri. Nasir Ali, Advocate)

AND

State of Karnataka by
Cottonpet Police,
And CCB Police,
Bengaluru City – 560053.
Represented by Learned
State Public Prosecutor,
High Court of Karnataka
Bengaluru-560001.

...Respondent

(By Sri. Veeranna G. Tigadi, Spl.P.P.,)

This Criminal Petition is filed under Section 439 Cr.P.C praying to enlarge the petitioner on bail in Cr.No.109/2020 of Cottonpet Police Station, Bengaluru, for the offence punishable under Sections 21(c), 27(b), 27-A, 29 and 21 of NDPS Act read with Section 120-B of IPC.

This Criminal Petition coming on for orders this day, the court made the following:

ORDER

Accused No. 14 is the petitioner. She has moved this court for bail for the second time. In Crime No.109/2020 she has been implicated by the respondent police of committing offences punishable under sections 21(c), 27(b), 27A and 29 of Narcotic Drugs and Psychotropic Substances Act and section 120B of the Indian Penal Code.

2. In the petition it is stated that she has serious health issues such as breathlessness due to asthma and irregular menstrual cycle. Presence of right ovarian dermoid cyst is detected. If her detention is continued, her health condition will deteriorate. Therefore, for

immediate medical treatment, it is necessary that she must be released on bail.

3. Ill health is one of the reasons that may be considered for granting bail though the accused may not be entitled to bail on merits of the prosecution case. In the case on hand, the petitioner was first examined by the Chief Medical Officer (CMO) of the Central Prison, Bengaluru, the report is,

"Her another major complaint is pain abdomen on and off, which is increasing in severity. She also has had not got her menstrual cycle since around two months. Her urine pregnancy test is negative. She also gives history of WDPV (White Discharge Per-Vagina). For the above complaints, she has been treated with antibiotics and antispasmodic regularly which has given her only temporary relief. She gives a past history of Bilateral Endometrial Cysts for which she has under gone Laparoscopic Bilateral Ovarian Cystectomy Under GA on 22-11-2018 at Manipal Hospital (Copy Enclosed). In this clinical Background it was decided to refer her

to Vani Vilas Hospital Bengaluru, but she refused due to her personal reasons. She also complains of reduced sleep, emotional outburst and feeling low for which the Psychiatrist has counseled and provided necessary Medications. Currently her general condition is stable, but she needs consultation by gynaecologist and ultrasound abdomen to evaluate the cause for her pain abdomen and for her missed periods”.

4. Then, on 7.12.2020, an order was passed that the petitioner should subject herself to medical examination at Vani Vilas Hospital, Bengaluru. A team of doctors of this Hospital examined her on 9.12.2020 and gave a report. The report shows that she was subjected to MRI scanning of Pelvis and ultra sound scanning of abdomen pelvis. The MRI scan impression is,

“(i) Imaging features are suggestive of Right ovarian Dermoid cyst as described.

(ii) Polycystic Left Ovary”.

Ultrasound scan impressions are

“A well-defined solid cystic mass is noted arising from the right ovary measuring ~4.8 x

4.5 x 4.2 cm in size (CC x AP x TR) and of ~46c.c in volume, with a thin septation within. The echogenic solid part of the cyst is located in the dependant portion and measures ~3.5cm in size, and shows no obvious uptake on colour Doppler study. The right ovary however could not be separately visualized from the mass. Left ovary measures ~11.5c.c. in volume (mildly bulky), with few peripherally arranged prominent follicles of varying sizes, largest measuring ~8mm, with a central echogenic stroma".

5. The petitioner appears to be chronic asthmatic, for which problem she has been on medication. Taking note of the MRI Scan and Ultrasound scan reports, the doctors at Vani Vilas Hospital have advised the petitioner to continue the same medication, and opined that if the symptoms become unresponsive to medical treatment or worsen or the patient develops symptoms suggestive of torsion or hemorrhage or infection, surgical intervention may be considered.

6. Sri. Hasmath Pasha's argument is that the opinion of the doctors at Vani Vilas Hospital clearly shows that the petitioner has severe medical issues; the continued detention will definitely lead to deterioration, and according to Section 36A of the NDPS Act, the High Court can exercise discretionary power under section 439 of Cr.P.C. notwithstanding the embargo under Section 37 of NDPS Act.

7. Sri. V.G. Tigadi opposes the application tooth and nail. His submissions are that the Vani Vilas Hospital doctors have clearly noted that the health condition of the petitioner is stable and the problem that she has are all ordinarily related to females. She has no such a serious health issue as requires release from jail. The State is ready to provide treatment to her at any hospital of her choice. The petitioner is unnecessarily exaggerating the health factor just to come out of jail.

8. Now if the reports given by the Chief Medical Officer of the Central Prison, Bengaluru and the team of

Doctors of Vani Vilas Hospital are considered, it may be stated that the petitioner has health related issues. Her medical history shows that she is a chronic asthmatic, since the age of 13 years and that in the year 2018, she underwent laparoscopic surgery. The other medical records that the petitioner has produced in proof of having taken treatment at Manipal Hospital also show that she had certain ailments. The medical reports may show that her present medical condition is stable; but chances of these problems, particularly ovarian cyst, becoming worse cannot be ruled out. It all depends on various factors. According to the doctors she may have to undergo a surgery in case she does not respond to medicines prescribed to her now. If she wants to take a treatment at a hospital of her choice, the same cannot be denied.

9. Sri. V.G. Tigadi's submission that the State will take her to any hospital of her choice, is something strange and not acceptable. Why the State should unnecessarily take that burden, when she is in a position

to meet the expenditure. I am of the view that for all these reasons bail can be granted to her. I do not think that Section 37 of NDPS Act is an embargo for exercising of jurisdiction under Section 439 Cr.P.C. for medical reasons. Of course, the petitioner needs to be subjected to stringent conditions. Hence the following :

- (a) Petition is allowed.
- (b) It is ordered that the petitioner shall be released on bail on obtaining from her a bond for Rs.3,00,000/- and two sureties for the likesum to the satisfaction of the trial court. She is also subjected to the following conditions : -

- (i) She shall not interfere with the remaining part of the investigation.
- (ii) She shall cooperate with the investigating officer to complete the investigation and that she shall appear before the

investigating officer whenever her presence is necessary.

(iii) She shall not threaten the witnesses and tamper with the evidence.

(iv) She shall not leave the jurisdiction of the trial court till conclusion of investigation.

(v) She shall mark her attendance before the respondent police station once in a fortnight on a Sunday between 9.00 AM and 1.00 PM, till conclusion of investigation.

(vi) She shall regularly appear before the trial court till conclusion of trial.

(vii) She shall not get involved in any criminal case in future and if any FIR is registered against

her, the same will be viewed
for cancellation of bail.

Sri Hasmath Pasha, learned counsel for the petitioner submits that the petitioner be permitted to execute bail bond before the jail authorities for her immediate release. He also submits that the petitioner will execute the bail bond before the trial court within a week once she comes out of jail. Considering this request, the petitioner is permitted to execute the bail bond as ordered above before the jail authorities and on her executing the bond, the jail authorities shall release her. Within a week after coming out of jail, the petitioner shall execute the bail bond before the trial court.

**SD/-
JUDGE**

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