

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 16<sup>TH</sup> DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MRS.JUSTICE M.G. UMA

**CRIMINAL PETITION No.1924 OF 2021**

**BETWEEN:**

STATE OF KARNATAKA  
REPRESENTED BY INSPECTOR OF POLICE  
OFFICE OF THE ASSISTANT  
COMMISSIONER OF POLICE  
ORGANISED CRIME WING  
CITY CRIME BRANCH  
NT PET, BENGALURU-560 002.  
REPRESENTED BY SPECIAL PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU-560 001.

... PETITIONER

(BY SRI: TIGADI VEERANNA GADIGEPPA, ADVOCATE (PH))

**AND:**

LOOM PEPPER SAMBA @ SIMON  
S/O SAMBA PEPPER  
AGED ABOUT 34 YEARS  
DARK CITY, SENEGAL  
PRESENT ADDRESS: NO.44  
GROUND FLOOR, 5<sup>TH</sup> MAIN  
7<sup>TH</sup> CROSS, BALAJI LAYOUT  
KOGILU VILLAGE, YALAHANKA  
BENGALURU-560 091.

... RESPONDENT

(BY SRI: K.S.VISHWANATH, ADVOCATE (PH))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.P.C. PRAYING FOR QUASHING/CANCELLING THE ORDER OF GRANTING BAIL DATED 25.02.2021 TO THE ACCUSED NO.7/RESPONDENT IN COTTONPET P.S., CR.NO.109/2020 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 21, 21(C), 27A, 27B, 29 OF NDPS ACT, AND SECTION 120B OF IPC IN CRL MISC.NO.1674/2021 BY THE LEARNED XXXIII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU.

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

**ORDER**

The petitioner-State is before this Court seeking cancellation of bail granted to respondent-accused No.7 in Crime No.109 of 2020 of Cottonpet Police Station, registered for the offences punishable under Sections 21, 21(c), 27A, 27B and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and under Section 120B of the Indian Penal Code (for short 'IPC'), dated 25.02.2021 passed in Crl.Misc.No.1674 of 2021 by the learned XXXIII Additional City Civil and Sessions Judge, Bengaluru.

2. Heard Sri.Tigadi Veeranna Gadigeppa, learned counsel for the petitioner and Sri.K S Vishwanatha, learned

counsel for the respondent. Perused the materials on record.

3. Learned counsel for the petitioner submitted that the petitioner is arrayed as accused No.7. He is a foreign national. 10 grams of MDMA which is classified as commercial quantity was seized from his custody. Now the investigation is completed and the charge sheet is filed. Section 14 of the Foreigners Act is also invoked against the present petitioner. The petitioner approached the Trial Court seeking grant of bail by filing Crl.Misc.No.1674 of 2021 and the same came to be allowed vide order dated 25.02.2021. The Trial Court has not considered the fact that the commercial quantity of MDMA was seized from the custody of the petitioner and Section 37(1)(b) of the NDPS Act is attracted to the facts of the case. The Trial Court has ignored the fact that the petitioner is a foreign national, who is staying in India even after expiry of his passport and he is to be deported to his country after conclusion of the trial. The Trial court

ignoring all these facts and circumstances, relied on the decision rendered by the Hon'ble Apex Court in **Ragini Dwivedi alias Gini alias Rags Vs State of Karnataka**<sup>1</sup>, proceeded to allow the petition ordering to enlarge the petitioner on bail. The decision in **Ragini Dwivedi (supra)** is not at all attracted to the facts of the case. The appellant therein is arrayed as accused No.2 and no contraband was recovered at her instance. Under such circumstances, the Hon'ble Apex Court proceeded to grant bail in her favour, which is not helpful to the present petitioner. Therefore, the Trial Court was not right in allowing the petition. Accordingly, he prays for allowing the petition by setting aside the order dated 25.02.2021 passed by the Trial Court granting bail, in the interest of justice. In the alternate, the learned counsel prays for remanding the matter to the Trial court after setting aside the impugned order with a direction to decide the matter afresh.

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<sup>1</sup> 2021 SCC Online SC 174

4. *Per contra*, learned counsel for the respondent submitted that in view of Section 2(viia) of the NDPS Act, any quantity above 10 grams is considered as commercial quantity. Therefore, the contraband which is said to have been seized from the respondent cannot be considered as commercial quantity. When the commercial quantity of contraband is not seized, Section 37(1)(b) of the NDPS Act is also not applicable.

5. Learned counsel contended that even though the petitioner is ordered to be enlarged on bail as referred to above, he is not yet released from the prison. Under such circumstances, Section 439(2) of Cr.P.C. is not attracted. He further submitted that there are in all 5 foreign nationals, who are arrayed as accused by the prosecution. Even though they were ordered to be enlarged on bail, in none of these cases, they were ordered to be detained in Detention Centre. Under such circumstances, the petitioner is not required to be detained

in Detention Centre. Accordingly, he prays for dismissing the petition.

6. On perusal of the materials on record, it is found that the Investigating Officer conducted investigation and filed the charge sheet. The seizure mahazar produced by the learned counsel for the petitioner discloses that 10 grams of MDMA was recovered from the present petitioner who is arrayed as accused No.7. It is also not in dispute that the provisions of Foreigners Act is invoked against the present petitioner. On going through the impugned order passed by the Trial Court, I do not find any discussions regarding any of these facts. On the other hand, the Trial Court proceeded to allow the petition only by referring the decision rendered by the Hon'ble Apex Court in **Ragini Dwivedi** (*supra*). Hence, I do find considerable force in the contention raised by the petitioner. Under such circumstances, without expressing any opinion on merits, I deem it proper to set

aside the impugned order passed by the Trial Court for fresh consideration on the points that are urged above.

7. Accordingly, the petition is **allowed**. The impugned order dated 25.02.2021 passed in Crl.Misc.No.1674 of 2021 by the learned XXXIII Additional City Civil and Sessions Judge, Bengaluru, is set aside.

The matter is remanded back to the Trial Court to consider the matter afresh after providing reasonable opportunity to both the parties to address their arguments.

**Sd/-  
JUDGE**

\*bgn/-