



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

**DATED THIS THE 2<sup>ND</sup> DAY OF FEBRUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 2870 OF 2026 (GM-RES)**

**BETWEEN:**

SAMEER KHAN @ DADU  
S/O LATE MURTUJA KHAN  
AGED ABOUT 51 YEARS  
RESIDING AT NO. 2627  
5<sup>TH</sup> CROSS, M.K.D.K. ROAD  
MANDI MOHALLA, MYSURU - 570 001.  
(NOW IN JUDICIAL CUSTODY)

...PETITIONER

(BY SRI R.K.MAHADEVA, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REPRESENTED BY  
STATION HOUSE OFFICER  
MANDI POLICE STATION  
NARASIMHARAJA SUB-DIVISION  
MYSURU CITY, MYSURU  
PIN CODE - 570 001.
2. POLICE OFFICER  
MANDI POLICE STATION  
NARASIMHARAJA SUB-DIVISION  
MYSURU CITY, MYSURU  
PIN CODE - 570 001.

...RESPONDENTS





(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BNSS PRAYING TO QUASH THE IMPUGNED REMAND ORDER DATED 13.01.2026 IN CRIME NO. 9/2026 OF MANDI POLICE STATION, MYSURU CITY, MYSURU FOR THE ALLEGED OFFENCE PUNISHABLE UNDER SECTION 20(b)(ii)(A) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 PASSED BY THE HONBLE III ADDITIONAL CIVIL JUDGE AND JMFC AT MYSURU VIDE ANNEXURE-A AGAINST THE PETITIONER/ ACCUSED NO. 1 ONLY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

**ORAL ORDER**

The petitioner/accused No.1 is before this Court calling in question a remand order dated 13-01-2026 passed by the III Additional Civil Judge and JMFC at Mysuru in Crime No.9/2026 registered for the offence punishable under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' for short).

2. Facts, in brief, germane are as follows: -

It is alleged that while the respondent No.2 was on patrolling duty, the petitioner who was working at a petty shop,



on seeing the respondent No.2 started behaving suspiciously and tried to run away. Upon being apprehended, 53 grams of ganja comes to be seized from the possession of the petitioner. A report is prepared in the presence of the panchas and is submitted to the Respondent No.1. On the basis of this report, a crime comes to be registered against the petitioner who is arraigned as accused No.1 for the offence punishable under Section 20(b)(ii)(A) of the Act. The petitioner is then produced before the concerned Court. The concerned Court by its order dated 13-01-2026 remands the petitioner to judicial custody. It is this order which is challenged by the petitioner in the subject petition.

3. Heard Sri R.K. Mahadeva, learned counsel appearing for the petitioner and Sri. B.N. Jagadeesha learned Additional State Public Prosecutor appearing for the respondent No.1.

4. The learned counsel for the petitioner submits that only 53 grams of ganja was seized from the possession petitioner which is a small quantity under the Act. Section 20(b)(ii)(A) of the Act which deals with offences involving small quantities of cannabis is punishable with



imprisonment of one year or with a fine and is bailable in nature. Section 37 of the Act states that only offences involving commercial quantities of contraband are non-bailable. Therefore, he submits that the petitioner should not have been remanded to judicial custody and instead should be released on bail.

5. *Per contra*, the learned Additional State Public Prosecutor, appearing for the respondents, would contend that the petitioner was previously convicted for a similar offence under the Act, where he pleaded guilty and it was settled before the Lok Adalat. The petitioner cannot be released on bail because Section 37 of the Act, states that offences under the Act are cognizable and non-bailable. He further submits that if the petitioner is to be released on bail, stringent conditions must be imposed on him.

6. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and have perused the material on record.



7. The afore-narrated facts are not in dispute. The only issue that merits consideration before this Court is whether the petitioner can be released on bail for the offence of possessing a small quantity of ganja as provided under Section 20(b)(ii)(A) of the Act, despite the rigours provided under Section 37 of the Act. This issue need not detain this court for too long nor delve deep into the matter.

8. The High Court of Kerala in the case of **MATHEW v. STATE OF KERALA**<sup>1</sup>, holds as follows:

"..... .."

5. A look as the law first. Section 20(b)(ii)(A) reads as follows:

20. Punishment for contravention in relation to cannabis plant and cannabis - Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:—

- (a) cultivates any cannabis plant; or
- (b) produces, manufactures, possesses, sells, purchases, transports, imports inter- State, exports inter- State or used cannabis, shall be punishable,-
  - (i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and
  - (ii) where such contravention relates to sub-clause (b),-

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<sup>1</sup> 2008 SCC OnLine Ker 53



(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

(emphasis supplied)

**6. It is very evident from a reading of the said section that the offence is punishable with imprisonment for a term which may extend to six months of fine or both. If there is no special declaration to make the offence non- bailable, one has got to go to the schedule to the Cr.P.C. to ascertain whether the offence is bailable or non-bailable. This conclusion follows easily from section 2(a), which defines a "bailable offence" as also Section 4 and 5 of the Cr.P.C. which stipulate that any offence under a special law must be investigated, enquired into, tried or otherwise dealt with in accordance with the Cr.P.C. if the special law does not make any special provision. There can also be no doubt that under the schedule to the Cr.P.C. (the last entry in Part II) that any offence punishable with imprisonment for less than three years or with fine only shall be non cognizable and bailable.**

**7. There can hence be no doubt that in the absence of a special provision in Narcotic Drugs and Psychotropic Substances Act, the offence under Section 20(b)(ii)(A) must be held to be a bailable one.**

**8. The contention is that there is adequate provision in Section 37 of the Narcotic Drugs and Psychotropic Substances Act. It declares all offences under the Narcotic Drugs and Psychotropic Substances Act to be non bailable, contends the learned Public Prosecutor. I shall first look at Section 37. It reads as follows:**

"37. Offence to be cognizable and non-bailable- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

a) every offence punishable under this Act shall be cognizable:



- b) no person accused of an offence punishable for [offences under Section 19 or section 24 or section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-
  - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
  - (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."
- (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

(emphasis supplied)

**9. A reading of Section 37 sans the head note must clearly show that there is no specific stipulation in the body of Section 37 which makes the offence under Section 20(b)(ii)(A) a non bailable one. The stipulation in the schedule to the Cr.P.C. is not seen modified by any specific provision in Section 37. The body of Section 37 is silent as to whether an offence under the Narcotic Drugs and Psychotropic Substances Act is bailable or non bailable. Section 37(1)(b) speaks of a special provision in relation to certain offences under the Narcotic Drugs and Psychotropic Substances Act. Offences under Section 19 or 24 or 27 A and also offences involving commercial quantity are governed by the special provisions stipulated in Section 37(1)(b) with regard to the grant of bail. Section 37(2) reiterates that the limitation in clause (b) are in addition to the limitations under the Cr.P.C.**

**10. Thus there can be trace of doubt that going by the language employed in the body of Section 37, the offence under Section 20(b)(ii)(A) is a bailable offence.**



**11.** The learned Public Prosecutor contends that the head note of Section 37 clearly shows that all offences under the Narcotic Drugs and Psychotropic Substances Act are cognizable and bailable. It is true that the head note reads thus

"Offences to be Cognizable and non-bailable".

**12.** In the body of Section 37, there is nothing that declares that all offences under the Narcotic Drugs and Psychotropic Substances Act shall be non-bailable but the head note suggests such a possibility. There is clear, apparent and evidence incongruity between the head note and the body of Section 37. The question is what would prevail.

**13.** The learned Public Prosecutor further points out that the statements of objects and reasons in the amendment Act 2 of 1989 by which Section 37 was amended, does also make it clear that the legislative exercise of amendment was inter alia "to provide that the offences shall be cognizable and non bailable". Clause 2(vii) stipulates that the purpose of amendment was to provide that the offences shall be cognizable and non bailable. The earlier Section 37 was amended in 1989 to include this head note.

**14.** Thus it is seen that the objects and reasons as also the head note indicate and suggest that all offences under the Narcotic Drugs and Psychotropic Substances Act are non bailable whereas the clear and unambiguous stipulations in the body of Section 37 do not lead to such a conclusion.

**15.** It is not necessary to search for the principles of law applicable. It is axiomatic in the interpretation of statutes that when the enacted provision of the statute in the body of the statutory provision leads to a particular conclusion, the head note or the objects and reasons cannot nullify or modify the effect of the enacted provisions in the body of the statute. Where there is confusion or ambiguity arising from the words used in the statutory provision, certainly external aids like head note and objects and reasons can be made use of. When the



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statutory provision is clear, cogent and unambiguous, it is impermissible to resort to external aids like the head note, marginal note or the objects and reasons to Come to a conclusion contrary to the conclusion which is plain reading of the statutory provisions yields. Maxwell on the interpretation of Statute accepts this principle. It will be apposite in this context to extract from page 11 of the 12th edition of Maxwell wherein it is stated as follows:

“The (headings) cannot control the plain words of the statute, [(1923) 1 Ch. 143], but they may explain ambiguous words, (1984) 9 App. Cas. 365. But “while the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section, where there cannot be any doubt as to their ordinary meaning, *R. v. Surrey (North-Eastern Area) Assessment Committee*(1948) 1 K.B. 28, per Lord Goddard C.J. at pp. 32, 33.”

**16.** The Supreme Court had occasion to consider this question in the decision in *Frick India Ltd. v. Union of India* ((1990) 1 SCC 400 : AIR 1990 S.C. 689) in para. 8 of the said decision, it is unambiguously held that the head note cannot modify the plain meaning in the statutory provisions. The following words appear in para. 8:

“It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.”.

**17.** The same principle has been followed by this Court in *Gokul Chit Funds v. Kochu Ouseph Vareed* (1976 K.L.T. 747(D.B.) and *Kerala State Housing Board v. Yusuff*. (1984 K.L.T. 55)(D.B.).

**18. In fact, I do note that there can be no confusion on this aspect as to whether the offence under Section 20(b)(ii)(A) is bailable or not**



**because a Division Bench of this Court in *Shaji v. Kerala State* (2004 (3) K.L.T. 270) while answering a reference of the very specific issue, in para. 22, the Division Bench had answered the question thus.**

"Going by section 36 of the Act, all offences under the Act, punishable with imprisonment for a period of more than three years shall be triable only by the Special Court. An offence under the Act, involving small quantity, is punishable as per Section 20(c) with rigorous imprisonment for a term which may extend upto six months only. The last entry in Part II of the Schedule to the Code of Criminal Procedure, 1973, provides that offences under laws other than Penal Code, 1860, punishable with imprisonment for less than three years or with the shall be 'No-cognizable and 'Bailable' to be tried by 'Any Magistrate'. The offence under the Act is made triable by a Special Court, in terms of Section 36 A(1)(a) of the Act, if it is "punishable with imprisonment for a term of more than three years". Of course, all offences under the Act are cognizable going by Section 37(1)(a) of the Act. Except to that extent, for trial of the offences, the provisions in the Code of Criminal Procedure, 1973, shall be applied going by Section 4(2) of that Code. So the offences under the Act, which are punishable with imprisonment for a term not exceeding three years, are bailable offences."

(emphasis supplied)

**19. I am bound by the decision of the Division Bench. The learned Public Prosecutor contends that the said decision did not take into consideration the head note of Section 37 as also the stipulation in the objects and reasons of the 1989 amendment. Even if those aids for construction were also looked into, the conclusion cannot be different.**

(Emphasis supplied)

8.1. Again, the High Court of Kerala in the case of **ROBUL**

**SAIKH v. STATE OF KERALA**<sup>2</sup>, holds as follows:

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<sup>2</sup> 2016 SCC OnLine Ker 7105



".... ....

3. The crux of the matter is whether the offence under Section 20(b)(ii)(A) is a bailable offence or not? Going by the caption of Section 37 of the N.D.P.S. Act, at the first blush, it may appear that all the offences under the N.D.P.S. Act are non bailable and cognizable. At the same time, Section 37(1)(a) says that every offence punishable under that Act shall be cognizable. There, the legislature has not incorporated the term 'non bailable' also. The caption of the Section should precisely be one representing the contents of the Section. When the detailed provision contained under Section 37 of the Act do not show that every offence under the Act are non bailable, especially when it has been clarified in the Section that every offence punishable under that Act is cognizable, it has to be noted that the legislature has never thought of making every offence under the Act as non bailable. Therefore, it should go by the general law as per the Code of Criminal Procedure, to decide as to whether an offence under the N.D.P.S. Act is bailable or not. When the offence under Section 20(b)(ii)(A) of the N.D.P.S. Act is punishable with rigorous imprisonment for a term which may extend to one year, or with fine or with both only, it has to be noted that the said offence is necessarily a bailable one.

4. The aforesaid position was clarified in the decision in *Shaji v. Kerala State* [2004 (3) KLT 270 (DB)] which was subsequently followed in the decision in *Mathew v. State of Kerala* [2008 (1) KLT 915]. **When there is an ambiguity in the caption of a particular Section in an enactment with the contents of that particular Section, the contents of the Section have to be followed and one should not go by the caption alone to arrive at the correct meaning of the provision in the enactment."**

(Emphasis supplied)



8.2. The High Court of Kerala, in the afore-quoted judgments observes that an offence under Section 20(b)(ii)(A) of the Act which is punishable with imprisonment of a term of one year is necessarily a bailable offence and is not classified as a non-bailable offence under Section 37 of the Act.

9. In light of the law laid down in afore-quoted judgments, the petitioner/accused No.1 deserves to be released on bail and the order remanding the petitioner to judicial custody deserves to be quashed.

10. For the aforesaid reasons, the following order:

**ORDER**

[I] Writ Petition is **allowed**.

[II] Impugned Remand Order dated 13.01.2026 in Crime No. 9/2026 of Mandi Police Station, Mysuru City, Mysuru for the alleged offence punishable under Section 20(b)(ii) (A) of Narcotic Drugs and Psychotropic Substances Act, 1985 passed by the Hon'ble III Additional Civil Judge and JMFC at



Mysuru vide Annexure-A against the petitioner/accused No.1, stands quashed.

[III] The petitioner shall be enlarged on bail in Crime No.9/2026 registered by Mandi Police Station, Mysuru City, Mysuru, subject to the following conditions:

- (a) The petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties for the like-sum to the satisfaction of the jurisdictional Court.
- (b) The petitioner shall not threaten or allure the prosecution witnesses in whatsoever manner.
- (c) The petitioner shall appear before the jurisdictional Court on all future hearing dates, unless exempted by the concerned Court.
- (d) The petitioner shall not get involved in similar offences.



- (e) The petitioner shall not leave the territorial limits of the trial Court without prior permission of the trial Court.
- (f) The prosecution is at liberty to seek cancellation of bail, in the event of any violation, of the aforesaid conditions.

**SD/-  
(M.NAGAPRASANNA)  
JUDGE**

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