
(2024) 09 RAJ CK 1125

In the Rajasthan High Court, Jodhpur Bench

Case No : Criminal Misc. 2nd Bail Application No. 9913 Of 2024

Ganpat Singh

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 06-09-2024

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8, 15, 21, 25, 37
Code of Criminal Procedure, 1973 — Section 446

Citation : (2024) 09 RAJ CK 1125

Hon'ble Judges : Rajendra Prakash Soni, J

Bench : Single Bench

Advocate : Ananda Ram, Shrawan Singh

Final Decision : Disposed of

Judgement

Rajendra Prakash Soni, J

1. Arrested in furtherance of FIR No.242/2023, registered at Police Station Siriyari, District Pali, petitioner has filed this application under Section 439 Cr.P.C. (Section 483 of the BNSS, 2023) for releasing him on bail. The petitioner is charged for offences punishable under Section 8/18 of the NDPS Act.

2. Earlier, applicant made an endeavor for seeking bail by way of filing first bail application which was disposed of without considering the merits of the case since it was not pressed. Now post recording of statement of seizure officer, this second bail application has been moved.

3. The accusation against the petitioner-accused is that on 19.10.2023, during a police blockade, a public transport bus bearing number RJ-22-PA-4139 of Rajasthan Roadways was checked and 4.530 kgs. of contraband opium was recovered from a bag in the possession of the petitioner, who was traveling on the bus.

4. Learned counsel representing petitioner has fervently argued that after filing

of charge sheet, statement of Seizure Officer Mahipal Singh (PW-1) has already been recorded during the trial.

He has drawn the attention of the Court to the statement made during the cross-examination of this witness and argued that in the present matter there is no compliance of provisions of Section 50 and 52A of Narcotic Drugs and Psychotropic Substances Act, 1985. It is further argued that petitioner is innocent person and a false case has been foisted against him. With aforesaid submissions, it was prayed that the present petition be allowed and petitioner may be enlarged on bail.

5. Learned Public Prosecutor for the State has strongly objected the different submissions made by learned counsel for the applicant and submitted that 4.530 Kgs. of contraband opium recovered from the applicant falls within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is attracted. He further submits that the seizure and sampling was in consonance with the procedure and the shortcomings pointed out by the learned counsel for the petitioner cannot be considered at this stage and are to be decided after trial only. Therefore, petitioner does not deserve to be released on bail.

6. I have given my anxious consideration to the rival submissions with reference to material placed before me.

7. On perusal of the record and upon consideration of the submissions, it would be clear that statement of Seizure Officer Mahipal Singh (PW-1) has already been recorded during the trial. Section 52A (2) and (3) of NDPS Act provides as under-

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or

conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples

so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

8. Preparing of inventory refers to listing of recovered contraband. Above provisions establish the procedure to be followed when a seizure officer seizes any contraband. After the seizure, the officer is required to prepare a list of the seized contraband and submit an application before a magistrate. There are three purposes for submitting such an application before the magistrate: -

1. Certification of the list: To have the list prepared by

the seizure officer certified by the Magistrate as correct.

2. Photographing the contraband: To take photographs of the contraband or the vehicle in the presence of the Magistrate and have those photographs certified as accurate.

3. Sampling: To allow the taking of representative samples from the contraband before the Magistrate and have the sampling process certified as correct.

9. Sub section 3 provides that whenever an application is presented under sub section 2, the Magistrate shall allow the application as soon as possible to ensure the integrity of the process.

10. Perusal of record reveals that in this case, the samples were drawn by the Judicial Magistrate himself and the list of contraband was also prepared by him with his own signature. This list was then verified by the police officer, indicating that the procedure was carried out under a police officer's supervision. It was in utter non-compliance with the necessary legal protocols.

11. It is undisputed in present case that petitioner was travelling in a Roadways bus, which is a public transport. The seizure officer conducted personal search of the petitioner and during that search, contraband was recovered from a bag in his possession. However, the procedure for issuing the notice under Section 50 of the NDPS Act raises important concerns. Firstly, the notice included a third option, allowing the police officer to conduct the search, which may be problematic for case of the prosecution. Moreover, no consent whatsoever, was obtained from the petitioner for any of the options given. Instead, only the petitioner's signature was taken as the receipt of the notice, which calls into question the compliance with the proper and prescribed legal procedure. Such procedure would prima facie not attract the exceptions carved out under Section 50 of the NDPS Act.

12. Section 50 ensures that the accused is made aware of his rights regarding the manner of the search. According to this section, before conducting a personal search, the accused must be informed of his right to opt for the search to be conducted either in the presence of a Magistrate or a Gazetted officer. This safeguard is crucial to protect the rights of individuals and prevent arbitrary or

coercive actions by the police.

13. In the present case, the seizure officer issued a notice under Section 50 of the Act but failed to obtain an option from the petitioner regarding the manner of search. This procedural deficiency is critical since failure to obtain option from the accused, prima facie invalidates the search. The failure to obtain an option from accused leads to a presumption of prejudice. It is prima facie presumed that the accused was deprived of a vital protection, which could have influenced the search's outcome. Evidence obtained from a prima facie invalid search, may be questionable in court, weakening the prosecution's case. Procedural non-compliance raises doubts about the legality of the search since statutory rights of petitioner were violated. In essence, the procedural lapse undermines the legitimacy of the evidence i.e. the contraband seized, making the case for bail stronger due to likelihood of acquittal or a weakened prosecution. Petitioner is in custody since 19.10.2023, I do not intend to go into the merits of the matter but of the considered view that the rigor of Section 37 of the N.D.P.S. act is duly satisfied and this court feels that the applicant has available to him substantial grounds so as to question the prosecution case.

14. Having considered the material available on record; the arguments advanced by counsel for the applicant particularly the facts narrated above no useful purpose would be served by keeping the applicant in detention for an indefinite period therefore, in view of the Court, cumulative effect of violation of Sections 50 and 52A of the NDPS Act entitles the petitioner for grant of bail.

15. Consequently, the present 2nd bail application is allowed and it is directed that the accused-petitioner Ganpat Singh S/o Ugam Singh, arrested in connection with the FIR No.242/2023, registered at Police Station Siriyari, District Pali shall be released on bail provided he furnishes a personal bond and two surety bonds of sufficient amount to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so. This order is subject to the condition that accused, within 7 days of his release, and sureties on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as copy of front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C in future.