

(2021) 10 RAJ CK 0068
In the Rajasthan High Court

Case No : S.B. Criminal Miscellaneous Bail Application No. 12019 Of 2021

Bhagga @ Baltej Singh S/O Jaganendra Singh Jat Sikh

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 23-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 29, 37

Evidence Act, 1872 — Section 27, 65B

Citation : (2021) 10 RAJ CK 0068

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : R.K. Charan, Vikram Sharma

Final Decision : Allowed

Judgement

Sandeep Mehta, J

The instant bail application has been filed under Section 439 Cr.P.C. on behalf of the petitioner who is in custody in relation to FIR No.563/2011, Police Station Kotwali, Chittorgarh for offences under Sections 8/18 & 29 of the NDPS Act.

Heard learned counsel for the petitioner, learned Public Prosecutor and perused the material available on record.

Contraband opium weighing 5 Kgs. was recovered from the co-accused Mukesh on 24.08.2021. During the course of investigation, the IO recorded the information of the co-accused Mukesh under Section 27 of the Evidence Act wherein, it was revealed that he had procured the opium in question from Gopal and that he was to supply the same to the present petitioner. On the basis of this conclusion, the IO proceeded to file charge-sheet against Mukesh and Gopal. Mukesh has been convicted after trial.

However, the trial of the accused Gopal is still pending.

Shri Charan, learned counsel representing the petitioner urges that the interrogation note of the co-accused Mukesh cannot be admitted in evidence. The IO has not collected any certificate under Section 65-B of the Evidence Act and thus, the call details cannot be read in evidence. He thus craves indulgence of bail for the petitioner.

Learned Public Prosecutor on the other other hand, vehemently and fervently opposes the submissions advanced by the petitioner's counsel. He contended that the petitioner has been absconding for the last ten years and thus, he does not deserve indulgence of bail. To this submission, Shri Charan urges that the petitioner was all during this period, residing in his village and the IO made no efforts whatsoever to arrest him.

It is apparent that the prosecution case as against the petitioner is based primarily on the interrogation note of the co-accused Mukesh. The evidentiary value thereof is questionable. So far as the call details are concerned, the IO did not procure any certificate under Section 65-B of the Evidence Act and thus, the admissibility thereof would also be under doubt. The allegation that the petitioner was absconding for about ten years is of-course adverse to the petitioner but as it is contended by the petitioner's counsel, there is no document whatsoever which can show that the IO made any efforts to arrest the petitioner from Ganganagar, where the petitioner permanently resides. Thus, the conditions of Section 37 of the NDPS Act are satisfied.

In this background and having regard to the overall facts and circumstances of the case as available on record, this Court is inclined to extend indulgence of bail to the accused petitioner.

Accordingly, this bail application is allowed and it is directed that the accused-petitioner Bhagga @ Baltej Singh S/o Shri Jaganendra Singh Jat Sikh arrested in connection with the F.I.R. No.563/2011 Police Station Kotwali, Chittorgarh shall be released on bail provided each of them furnishes a personal bond of Rs.50,000/-and two surety bonds of Rs.25000/- each 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.