

(2019) 04 RAJ CK 0122

In the Rajasthan High Court

Case No : Criminal Misc. Second Bail Application No. 4445 Of 2019

Hakim Khan And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 25, 29
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2019) 04 RAJ CK 0122

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : B.R. Godara, Gaurav Singh

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioners as well as learned Public Prosecutor and also perused the material on record.

The petitioners have been arrested in FIR No.132/2018 of Police Station Parbatsar, District Nagaur for the offences punishable under Sections 8/18, 8/29 and 8/25 of NDPS Act. They have preferred these bail applications under Section 439 Cr.P.C.

Learned counsel for the petitioners has submitted that it is clear from the statement of Pushpendra Banshiwal (PW-1), the then SHO of Police Station Parbatsar, District Nagaur that 16 packets containing opium were seized by the police and the Seizure Officer first mixed all the said opium in a jerrican and thereafter took two samples of 200 gms each from that mixture. Thus, it is clear that the Seizure Officer did not collect separate samples from each packet. It is also submitted that the I.O. has not stated that the test by the U.N. Kit was carried out on each packet before taking small quantity of opium for samples.

Learned counsel for the petitioners while placing reliance on the decision of this Court rendered in the case of Netram Vs.

State of Rajasthan, reported in 2014(1) Cr.L.R. (Raj.) 163 has argued that this Court has held that if the samples from each bag containing poppy husk/poppy straw have not been collected and test by U.N. Kit has not been conducted on each bag and if the Seizure Officer has taken out some quantity of narcotic drug from each bag and after mixing the same has taken out some portion for sample, then, the same is not in conformity with the Standing Instruction No.1/88 issued by the Narcotics Control Bureau, New Delhi, particularly, Instruction No.1.7 and, as such, it cannot be said that the narcotic contraband recovered in the matter is of commercial quantity or above. It is, thus, prayed that the petitioners may kindly be enlarged on bail.

Having considered the overall facts and circumstances of the case and substantial grounds taken in these bail applications and taking into consideration the judgment passed by this Court in Netram's case (supra), this Court is of the opinion that there are rare chances of petitioners' conviction and trial of the case is likely to take time, this Court is inclined to grant bail to the petitioners.

Learned Public Prosecutor has opposed the bail applications. Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the accused petitioners under Section 439 Cr.P.C.

Accordingly, these second bail applications filed under Section 439 Cr.P.C. are allowed and it is directed that petitioners Hakim Khan S/o Shri Ahmad Khan and Hajariram @ Hajarilal S/o Devilal shall be released on bail in connection with FIR No.132/2018 of Police Station Parbatsar, District Nagaur provided each of them executes a personal bond in a sum of Rs.50,000/-with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.