

(2018) 11 RAJ CK 0027

In the Rajasthan High Court

Case No : Criminal Misc. Bail No. 5206 of 2018

Hanumana Ram S/o Late Sh. Purkha Ram @APPELLANT@Hash State Of Rajasthan

Date of Decision : 16-11-2018

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8, 15, 29
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2018) 11 RAJ CK 0027

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Kailash Kheleri, Ashok Upadhyaya

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 connection with FIR No.171/2017 of Police Station, Osian, District Jodhpur for the offence punishable under

Section 8/15, 29 NDPS Act. They have preferred these bail applications under Section 439 Cr.P.C. Learned counsel for the petitioner has submitted

that it is clear from the statement of PW.3 "Nema Ram, the then SHO, Police Station, Osian that 27 bags containing poppy husk were seized by

the police and the Seizure Officer first took 1 kg. of poppy husk from each bag, then he mixed the said poppy husk on a tarpaulin and thereafter took

two samples from that mixture. Thus, it is clear that the Seizure Officer did not collect separate samples from each bag. It is also submitted that the

I.O. has not stated that the test by the U.N. Kit was carried out on each bag before taking small quantity of poppy husk 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, the accused persons cannot be held guilty for possession of narcotic drugs of commercial quantity. It is also argued that no other case of similar nature is pending against petitioners. It is, thus, prayed that the petitioners may be released on bail.

Per contra, learned Public Prosecutor has opposed the bail applications.

Having considered the overall facts and circumstances of the case and taking into consideration the judgment passed by this Court in Netram's

case (supra), 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 bail applications filed under Sec.439 Cr.P.C. are allowed and it is directed that petitioners "Prakash son of Sukh Ram and

Hanumana Ram son of Late Purkha Ram shall be released on bail in connection with FIR No.171/2017 of Police Station, Osian, District Jodhpur

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.