

(2024) 04 RAJ CK 0134

In the Rajasthan High Court

Case No : Criminal Miscellaneous II Bail Application No. 2559 Of 2024, Criminal Miscellaneous Bail Application No. 3318 Of 2022, 2577 Of 2024

Panna Ram And Others

APPELLANT

Vs

Central Narcotics Bureau And Others

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 15(b), 25, 37

Citation : (2024) 04 RAJ CK 0134

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Mahaveer Bhanwariya, R.S. Gill, Ram Niwas, K.S. Nahar

Final Decision : Dismissed

Judgement

Kuldeep Mathur, J

These applications for a regular bail under Section 439 Cr.P.C. have been filed by the petitioners who have been arrested in connection with F.I.R. No.02/2021, registered at Police Station CBN, Neemuch, for offences under Sections 8/15 and 25 of the NDPS Act.

Heard learned counsel for the petitioners and learned Spl.

Public Prosecutor. Perused the material available on record.

Learned counsel for the petitioners submitted that recovery of contraband (Poppy Husk/Straw) weighing 2939.800 kgs. was made by a team of CNB from a truck bearing Registration No. RJ-19-GC-2999. Learned counsel submitted that as per prosecution, at the time when above mentioned truck was intercepted by a team of CNB, the petitioner- Panna Ram was found sitting on the wheel of the offending vehicle whereas the petitioner- Dhannaram was sitting beside him. The petitioner- Devendra Kumar Siyag is registered owner of the offending vehicle and it is alleged that the contraband was loaded in the vehicle under his

instructions.

Learned counsel submitted that the sampling procedure undertaken in the present case by the Seizure Officer was not in conformity with the Standing Instructions No.1/88, dated 15.03.1988 issued by Narcotics Control Bureau, New Delhi.

Drawing attention of the Court towards the challan papers and the statements of the Seizure Officer (PW.7) recorded before the competent criminal court, learned counsel submitted that the contraband was recovered from 134 black coloured plastic bags and 8 white coloured sacks. Representative samples were collected from each bag/sack by mixing them for further investigation and sending it for FSL examination. It was vehemently submitted that since the recovered contraband was mixed and samples were drawn thereof for being send for testing, it cannot be said with certainty that each sack/plastic bag contained alleged contraband or not. In this regard, learned counsel placed reliance on the judgment rendered by co-ordinate Bench of this Court in the case of Netram Vs. State of Rajasthan reported in 2014 (1) Cr.L.R. (Raj.) 163.

Learned counsel for the petitioners further submitted that the procedure adopted by the Seizure Officer was illegal inasmuch as no colour test using U.N. Kit was conducted before mixing the samples drawn from different bags/sacks. Learned counsel argued that the procedure of sampling adopted by the Seizure Officer is totally void and therefore, the petitioners deserve to be enlarged on bail.

It was fervently contended that co-accused- Dhashrath Singh who was arrested on the basis of disclosure statements of the petitioner- Devendra Kumar Siyag, has already been acquitted by the Court of Special Judge, NDPS Cases, Pratapgarh, Rajasthan (Special Session Case No.17/2023) after holding full fledged trial against him.

Lastly, learned counsel submitted that no case of similar nature is pending against the petitioners. The petitioners are in judicial custody for more than two years and the trial of the case is likely to take sufficiently long time. On the strength of submissions advanced by learned counsel, he sought indulgence of this Court to enlarge the petitioners on bail.

Per contra, learned Spl. Public Prosecutor has vehemently opposed the bail applications and submitted that huge quantity of contraband (Poppy Husk/Straw) had been recovered from the conscious/constructive possession of the petitioners- Dhanna Ram and Panna Ram. Sufficient material is available on record to indicate that the contraband in the offending vehicle was being transported with due knowledge of the petitioner- Devendra Kumar Siyag, who is registered owner of the offending vehicle. Learned counsel vehemently submitted that sampling procedure undertaken by the Seizure Officer was in conformity with the fact whether the Standing Instructions/Rules. It was submitted that even otherwise the procedure laid down under NDPS Act or Standing Orders was complied with or not, cannot be looked at the stage of grant of bail, it is to be

looked into at the time of trial.

Learned Spl. Public Prosecutor implored the Court to reject the present bail applications.

Having considered the rival submissions, facts and circumstances of the case and after having perused the statements of the Seizure Officer (PW.7), this Court prima facie finds that the petitioners- Panna Ram and Dhanna Ram were arrested on 01.09.2021 when they were transporting more than 29 Quintals of contraband (Poppy Husk/Straw) in the truck bearing registration No. RJ-19-GC-2999. The Investigating Agency during the course of investigation, has found sufficient corroboratory evidence in form of mobile calls/chats, CDR etc., indicating involvement of the petitioner- Devendra Kumar Siyag in the commission of alleged crime.

As far as the arguments raised on behalf of the petitioners with regard to violation of the procedure undertaken while drawing samples in the light of circulars issued by NCB and the judgment passed by this Court in the case of Netram (supra) is concerned, suffice it to note that the decision passed by this Court in the case of Netram (supra) was passed in appeal against conviction. This Court has gone through the judgment passed in Netram (supra) and finds that appellant's conviction was by this Court altered from one under Section 8/15 of the NDPS Act to Section 8/15 (b) of the NDPS Act, for a case involving non-commercial quantity i.e. 40 kgs. of Poppy Husk/Straw. In other words, the appellant was not acquitted of the offences under the NDPS Act. On the ground of failure to comply with the Standing Instructions/Orders while drawing samples.

In the present case, this Court prima facie finds that contraband (Poppy Husk/Straw) weighing 2939.800 kgs. was recovered from 134 black coloured plastic bags and 8 white coloured sacks. True it is that normally it is advisable to draw one sample from each bag/sack, in case of seizure from more than one bag/sack, however, merely because samples were drawn after mixing the contraband, the same would not render the entire seizure proceedings illegal/non est in law. Though, it may affect the punishment which may be imposed upon the accused persons, as the punishment for offences under the NDPS Act depends on the quantity of the contraband recovered. The accused in these circumstances may take a defence that few of the bags/sacks or at least one bag/sack did not contain contraband (Poppy Husk/Straw). Thus, the defence with regard to violation of the procedure provided in the NCB circulars may be raised at the time of trial.

Hon'ble The Apex Court while considering the import of Section 37 of the NDPS Act in Union of India Vs. Ram Samujh reported in (1999) 9 SCC 429 pleased to hold as under:-

"It is also to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are

dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved.”

In the prima facie opinion of this Court, the offences alleged against the petitioners are of very grave and serious nature. Significantly huge quantity of contraband (Poppy Husk/Straw) has been recovered in the present case attracting the rigors of Section 37 of the NDPS Act, the petitioners have failed to substantiate by cogent reason/evidence that the twin conditions enumerated in Section 37 of the NDPS Act are satisfied so as to make out a case for grant of bail.

In the result, the present criminal misc. bail applications are dismissed.

It is however made clear that the findings recorded/observations made above are for limited purposes of adjudication of the present bail applications. The trial Court shall not get prejudiced by the same.

A copy of this order be placed in each of the file.