

(2022) 03 RAJ CK 0026

In the Rajasthan High Court

Case No : S.B. Criminal Miscellaneous 3rd Bail Application No. 1213, 1822 Of 2022

Ramdev And Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 29

Citation : (2022) 03 RAJ CK 0026

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Mahipal Vishnoi, Shrawan Bishnoi, Manoj Kumar

Final Decision : Allowed

Judgement

Vinit Kumar Mathur, J

The present bail applications have been filed under Section 439 Cr.P.C. on behalf of the petitioners who are in custody in connection with F.I.R. No.03/2020, P.S. Khinwara, District Pali, for the offences under Sections 8/15, 29 NDPS.

In view of the order passed by this Court on 18.02.2022, Seizure Officer Mr. Manoj Kumar is present in the Court. He has filed his affidavit wherein it is stated that he was dealing with the commercial quantity of the contraband for the first time and was not aware about the directions issued by this Court and the notification issued by the Director General of Police. He further submitted that in a recent case wherein the commercial quantity of contraband was recovered, he has followed the entire procedure in accordance with the judgment of this Court as well as the directions issued by the Director General of Police. He submitted that it was a bona fide error and he undertakes that in future, no such lapses will be committed by him while investigating the matters of such nature.

Considering the fact that it was a bona fide error and the undertaking given by

Mr. Manoj Kumar, a lenient view is taken in the matter by not taking any further action against him but at the same time, he is warned that if such lapse is occurred in future, stern action will be taken against him.

Heard learned counsel for the petitioners and learned Public Prosecutor. Perused the material available on record.

After the rejection of the second bail application on 21.5.2021, the statement of Seizure Officer Mr. Manoj Kumar recorded as PW-2. In the statement of PW-2, it has come on record that the contraband was recovered in 18 bags. Learned counsel further submits that from the 18 bags, the contents of contraband were emptied on a plastic sheet and after mixing the same, the samples were collected for sending the same to the FSL. Learned counsel further submits that the same is contrary to the standing instructions issued by the Government of India.

Learned counsel for the petitioner while placing reliance on the decision of this Court in the case of Net Ram Vs. State of Rajasthan reported in 2014(2) WLN 394 (Raj.) in S.B. Criminal Appeal NO. 673/2008 argued that if the samples from which the bags containing poppy husk/poppy straw were not collected and the colour test by the U.N. Kit was not conducted on each bag and the Seizure Officer after mixing, some portion for sample was taken out, 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 guilty for possession of Narcotic Drugs of commercial quantity. Therefore, it is prayed that the petitioners may be enlarged on bail.

The learned Public Prosecutor opposes the bail.

Having regard to the facts and circumstances of the case and upon a consideration of the arguments advanced, this Court is of the opinion that the bail applications filed by the petitioners deserve to be accepted.

Consequently, the bail applications filed under Section 439 Cr.P.C. are allowed. It is ordered that the accused-petitioners (1) Ramdev S/o Hadmanram (2) Prahlad Ram S/o Nimbaram arrested in connection with F.I.R. No.03/2020, P.S. Khinwara, District Pali shall be released on bail; provided they furnish a personal bond of Rs.1,00,000/- (Rupees: One lac only) each with two sureties of Rs.50,000/- (Rupees : Fifty Thousand Only) 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.