
(2019) 09 RAJ CK 0028

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 8837 Of 2019

Uda Ram

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 29, 37
Code Of Criminal Procedure, 1973 — Section 439
Evidence Act, 1872 — Section 27

Citation : (2019) 09 RAJ CK 0028

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : B. Ray Bishnoi, A.R. Choudhary, Gautam Jain

Final Decision : Dismissed

Judgement

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

The petitioner has been arrested in FIR No. 50/2018 of Police Station Bilara, District Jodhpur for the offences punishable under Section 8/15 of NDPS Act. He has preferred this bail application under Section 439 Cr.P.C.

Learned counsel for the petitioner has submitted that as per the prosecution story, the police had recovered 89.57 kgs. Of poppy straw from possession of three accused persons namely petitioner-Uda Ram, Surendra and Vishna Ram, while they were transporting the said narcotic contraband in a vehicle bearing registration No. CH-O1-AJ-5509 on 01.03.2018. It is submitted that after investigation, the police have filed charge-sheet against the petitioner for the offence punishable under Sections 8/15 and 29 of the NDPS Act. It is submitted that charges have also been framed by the trial court for the aforesaid offences.

Learned counsel for the petitioner has submitted that now statements of the Seizure Officer PW-3 Mr. Gautam Jain, Circle Inspector, Sumerpur, District Pali,

the then SHO Police Station, Bilara have been recorded before the trial court, where in his statement-in-chief, he has specifically stated that total poppy straw weighing 89.57 kgs. was packed in five bags. Bag No.1 was containing 12.60 kgs, bag No.2 was containing 20 kgs., bag No.3 was containing 18.97 kgs, bag No.4 was containing 18 kgs. and bag No.5 was containing 20 kgs. of poppy straw in it. It is submitted that the Seizure Officer PW-3 has further explained that during the course of interrogation, co-accused Surendra claimed that bag Nos. 1 and 2 belongs to him, whereas co-accused Vishna Ram claimed that bag Nos.3 and 4 belong to him and petitioner-Uda Ram has claimed that bag No.5 belongs to him. It is argued that since 20 kgs. of poppy straw was filled in bag No.5 which is below commercial quantity, therefore, petitioner is entitled to be released on bail as the restrictions imposed in Section 37 of the NDPS Act will not come in the way of the petitioner.

Per contra, Learned Public Prosecutor has vehemently opposed the bail application and invited my attention towards the charge-sheet, particularly the seizure memo, wherein it has nowhere been mentioned that only bag No.5 containing 20 kgs. of poppy straw belongs to the petitioner-Uda Ram.

Heard learned counsel for the parties and carefully scrutinized the charge-sheet as well as the statement of the Seizure Officer PW-3 Mr. Gautam Jain.

In the seizure memo prepared by the Seizure Officer PW-3 Mr. Gautam Jain on 01.03.2019 on the spot, it has nowhere been mentioned that bag Nos.1 and 2 belong to co-accused Surendra, bag Nos.3 and 4 belong to co-accused Vishna Ram and bag No.5 belongs to the petitioner-Uda Ram. From the memo of information given by the petitioner and other co-accused persons under Section 27 of the Indian Evidence Act to the Investigating Officer no such facts are revealed that petitioner Uda Ram and other co-accused persons were in possession of separate bags.

It is very strange that the then Seizure Officer PW-3 Mr. Gautam Jain without there being any occasion or need explained before the trial court that all the accused persons were in possession of bags containing different quantity of poppy straw and were not jointly possessing the poppy straw weighing around 89.57 kgs. It is noticed that the said explanation was offered by PW-3 in his statement-in-chief itself though no such fact is mentioned in the seizure memo prepared by PW-3.

The above mentioned facts raised a doubt in the mind of court that the Seizure Officer might had offered this explanation to help out the accused persons only, therefore vide order dated 14.08.2019 direction was given to the Seizure Officer to appear before this Court today to clear the doubt.

Pursuant to the direction given by this Court on 14.08.2019, Seizure Officer Mr. Gautam Jain, Circle Inspector, Sumerpur, District Pali is present in the Court, however, he has not been able to satisfy this Court as to how he had deposed before the trial court that accused persons were in possession of separate bags

and are not having joint possession over the total contraband of poppy straw weighing around 89.57 kgs. He has frankly admitted that no such fact is mentioned in seizure memo and as well as he has not prepared any interrogation note of the accused persons claiming ownership of different quantity of poppy straw.

Having taken into consideration the above facts and circumstances of the case, looking to the nature of accusation and gravity of the offence, without expressing any opinion on the merits of the case, I am not inclined to grant bail under Section 439 Cr.P.C. to the petitioner.

Accordingly, the bail application preferred by the petitioner under Section 439 Cr.P.C. is rejected.

At the same time, I deem it proper to direct the Inspector General of Police, Jodhpur to enquire about above referred conduct of the Investigating Officer Mr. Gautam Jain and if requires so, appropriate action be initiated against him.

A copy of this order be sent to Inspector General of Police, Jodhpur immediately.