HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. Bail Application No. 10767/2020

Tosib S/o Jakir, Aged About 27 Years, By Caste Musalman, R/o Laduna, Police Thana Sitamau, District Mandsore, Madhyapradesh. (At Present Lodged At Sub Jail Phalodi).

----Petitioner

Versus

State Of Rajasthan, Through P.P.

----Respondent

Connected With

S.B. Criminal Misc. Bail Application No. 9088/2020

Ikabal S/o Sadiq, Aged About 31 Years, R/o Laduna, Police Thana Sitamau, District Mandsaur, Madhyapradesh. (Presently Lodged At Sub Jail, Phalodi).

----Petitioner

Versus

State, Through PP

----Respondent

For Petitioner(s) : Mr. Bhanwaru Ram through VC
For Respondent(s) : Mr. Sudhir Tak, P.P.

HON'BLE MR. JUSTICE DEVENDRA KACHHAWAHA

Order

15/12/2020

The present bail applications have been filed under Section 439 Cr.P.C. on behalf of the petitioners, who are in judicial custody in connection with F.I.R. No.144/2019, Police Station Lohawat, District Jodhpur, registered for the offences under Sections 8/18, 8/21, 8/29 of NDPS Act and Section 3/25 of Arms Act.

Heard learned counsel appearing for the petitioners through video call and learned Public Prosecutor, present in person. Perused the material available on record.

Learned counsel for the petitioners appearing through video call stated that statements of seizure officer as well as investigating officer have been recorded. During the course of cross-examination, seizure officer admitted that third option was given by him to the accused persons to that effect that he may search and proceeding would be conducted by the seizure officer himself and seizure officer further admitted that during the interrogation note, accused admitted that there are equal share of recovered contraband, therefore, learned counsel for the petitioners stated that if the recovered quantity divided into four equal portion then, out of total recovered contraband, individual share of accused petitioners remains 175 gms of smack and 250 gms of opium respectively, which is below commercial quantity. Learned counsel further stated that investigating officer admitted that percentage of Morphine has not been mentioned upon packet of smack marked as 'B' as well as in the FSL report, therefore, if nothing is mentioned in the FSL report, I cannot say anything whether the percentage of Morphine is less than 0.2%. In this view of the matter, learned counsel for the petitioners stated that it cannot be said that recovered quantity is above the standard quantity of Morphine i.e. 0.2% which has not been mentioned in the FSL report. The investigating officer further admitted that samples were not sent to the laboratory within 72 hours from the recovery. Lastly, learned counsel for the petitioners requested to grant bail to the accused-petitioners.

In support of his contentions, learned counsel for the petitioner has relied upon the following judgment/order(s);

(1) Sarija Banu alias Janarthani alias Janani Vs. State through Inspector of Police, reported in (2004) 12 Supreme Court Cases 266;

(2) S.B. Criminal Misc. Bail Application No.10398/2020 (Sumeram Vs. State order dated 09.12.2020);

(3)Girdhari Nath Vs. State of Rajasthan, reported in 1998 Cr.L.R. [Raj.] 291;

(4) S.B. Criminal Misc. Bail No.10641/2016 (Hanuman Ram @ Hanumanta Ram Vs. State & connected S.B. Criminal Misc. Bail Application No.10930/2016 Shanker Lal @ Gopa Ram Vs. State, vide common order dated 02.02.2017);

(5) S.B. Criminal Second Misc. Bail No.11349/2016 (Kanhaiyalal, Rajesh and Sajjan Vs. State, order dated 19.01.2017);

(6) S.B. Criminal Misc. Bail Application No.8630/2020 (Gurjindra Singh @ Sonu Vs. State, order dated 26.08.2020);

(7) S.B. Criminal Misc. Bail No.1314/2018 (Ashok Kumar Vs. State, order dated 29.11.2018); and

(8) S.B. Criminal Misc. Bail Application No.3342/2020 (Dinesh @ Rinku Vs. State, order dated 07.09.2020).

Per contra, learned Public Prosecutor has opposed the bail application and stated that alleged recovered quantity is commercial quantity and looking to the quantity of alleged contraband, bail should not be granted to the accused-petitioners.

The statement of seizure officer-Sunil Tada recorded as PW-1 and he has admitted that "notice under Section 50 of NDPS Act not given separately to each of the accused and separate consent were not taken. It is correct that third option was given by me".

Likewise, the statement of investigating officer-Rajiv Bhadu was recorded as PW-2 and he has admitted that "percentage of Morphine was not mentioned in FSL report in regard packet of Smack marked as 'B' therefore, he did not know that whether the percentage of Morphine is less than 0.2%" and he further admitted that "samples were sent to the laboratory after 72 hours."

After thoughtful consideration of arguments advanced by both the side and perusal of the judgment/order(s) cited by learned counsel for the petitioners, it is also an admitted position that separate notices under Section 50 of NDPS Act were not given by seizure officer to each of the accused and third option was given by seizure officer that is also against the spirit of Section 50 of NDPS Act. Apart from that, seizure officer admitted that during the course of interrogation, he was informed that all the four accused have equal share in the recovered contraband, therefore, in the opinion of this Court, recovered quantity of smack would be 175 gms and 250 gms opium for each accused which is below commercial quantity.

Looking to the facts and circumstances of this case as well as the statements of seizure officer and investigating officer, as discussed herein above and as per ratio decided in judgment/order(s) cited by learned counsel for the petitioners, without expressing any opinion on the merits/demerits of the case, this Court is of the opinion that the bail applications filed by the petitioners deserve to be accepted.

Consequently, the bail applications are allowed. It is ordered that the accused-petitioners – (1)Tosib S/o Jakir and (2)Ikabal S/o Sadiq, arrested in connection with F.I.R. No.144/2019, Police

Station Lohawat, District Jodhpur, shall be released on bail provided each of them furnish a personal bond of Rs.1,00,000/- (Rupees One Lakh) and two sound and solvent sureties of Rs.50,000/- (Rupess Fifty Thousand) each to the satisfaction of the learned trial Court for their appearance before that Court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(DEVENDRA KACHHAWAHA),J

5-6-Arvind/-

RAJASTHAN HIGH COURT

