HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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S.B. Criminal Misc. Bail Application No. 14479/2020

Bachnaram S/o Udaram, Aged About 48 Years, B/c Vishnoi, R/o Dhadu, Police Thana Phalodi, Dist. Jodhpur.
(Presently Lodged At Sub Jail, Phalodi).

----Petitioner

Versus

State of Rajasthan through PP

----Respondent

For Petitioner(s)	:	Mr. Bhanwaru Ram through VC
For Respondent(s)	:	Mr. Farzand Ali, GA-cum-AAG with Mr. Laxman Solanki, PP

HON'BLE MR. JUSTICE DEVENDRA KACHHAWAHA

Order

16/12/2020

The present bail application has been filed under Section 439 Cr.P.C. on behalf of the petitioner, who is in judicial custody in connection with F.I.R. No.161/2019, Police Station Phalodi, District Jodhpur, registered for the offence under Section 8/15 and 29 of the NDPS Act.

Heard learned counsel appearing for the petitioner through video conferencing and learned Government Advocate-cum-Additional Advocate General, present in person. Perused the material available on record.

Learned counsel for the petitioner stated that in this case, separate samples were not taken from each bags and samples were taken after mixing of the contraband. He further stated that as per law laid down in the case of Netram Vs. State of Rajasthan,

reported in 2014(1) Cr.L.R. (Raj.) 163, a Co-ordinate Bench of this Court recently has granted benefit of bail on this ground. Therefore, benefit of bail may be granted to the present accused-petitioner.

Per contra, learned Government Advocate-cum-Additional Advocate General opposed the bail application of the accused-petitioner and stated that accused-petitioner has criminal record but he is not in a position to point out any other criminal case which was registered against the accused-petitioner.

It is an admitted position that total 1227 kgs. of poppy husk were recovered in 35 plastic bags and not a single bag having weight above 50 kgs. and samples were taken after mixing of alleged contraband, taken from each bag.

It is also an admitted position that recovered quantity is huge quantity but samples were not prepared by the Seizure Officer as per the prescribed procedure, therefore, it cannot be inferred that all the bags having same nature of contraband and also, ratio decided in Netram’s case was not followed by seizure officer.

In my humble view, it is very unfortunate that Netram’s case was decided by this Court in the year 2013 and reported in the year 2014; and despite that, day in or day out, Police Officials are not following the directions issued in Netram’s case in their true spirit and due to such type of negligence on the part of Seizure Officer in the process of sampling, in so many cases having recovery of commercial quantity, benefit of bail is granted to the accused persons.

Recently, on the basis of ratio decided in Netram’s case(supra), benefit of bail was granted in S.B. Criminal Misc. Bail

Application No.2782/2020 connected with S.B. Criminal Misc. Bail Application Nos.2661/2020 & 8790/2020 passed in the cases of Suresh Kumar, Pradeep Kumar & Sampatlal Bhambhu respectively vide order dated 26.11.2020.

In view of the aforementioned observations and having regard to the facts and circumstances of the case, without expressing any opinion on the merits/demerits of the case, this Court is also inclined that the bail application filed by the petitioner deserves to be accepted and the present accused-petitioner deserves to be enlarged on bail.

Consequently, the bail application is allowed. It is ordered that the accused-petitioner-Bachnaram S/o Udaram, arrested in connection with F.I.R. No.161/2019, Police Station Phalodi, District Jodhpur, shall be released on bail provided he furnishes 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 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.

In view of the observations foregoing, a copy of the order instant be sent to the Director General of Police, Rajasthan to sensitize the Police Officials, so that such type of mistake in the process of sampling could not be repeated in future.

(DEVENDRA KACHHAWAHA),J

91-Arvind/-