HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. Bail Application No. 2690/2024

Ramswaroop S/o Birbal Ram, Aged About 30 Years, R/o Jhotawali, Police Station Muklawa, District Sriganganagar.
(Presently Lodged At Sriganganagar Jail).

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

CONNECTED WITH

S.B. Criminal Misc. II Bail Application No. 11469/2023

Suraj Kumar @ Surja Ram S/o Hari Kishan, Aged About 30 Years, R/o Ganguwala Sikhan, Police Station Padampur, District Sriganganagar.
(Presently Lodged In District Jail, Sriganganagar).

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Ms. Priya Bishnoi Mr. Pravesh Kumar Rawla
For Respondent(s)	:	Mr. Mukhtiyar Khan, P.P. with Mr. Avinash Godara

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HON'BLE MR. JUSTICE FARJAND ALI

Order

27/03/2024

1. The jurisdiction of this Court has been invoked by way of filing applications under Section 439 Cr.P.C. at the instance of accused-petitioners. The requisite details of the matter are tabulated herein below:

S. No.	Particulars of the Case	
Petitioner - Ramswaroop		
1.	FIR Number	67/2020
2.	Concerned Police Station	Muklawa
3.	District	Sri Ganganagar
4.	Offences alleged in the FIR	8, 21, 22 of NDPS Act
5.	Offences added, if any	29 of NDPS Act
6.	Date of passing of impugned order	05.02.2024
Petitioner – Suraj Kumar @ Surja Ram		
1.	FIR Number	67/2020
2.	Concerned Police Station	Muklawa
3.	District	Sri Ganganagar
4.	Offences alleged in the FIR	8, 21, 22 of NDPS Act
5.	Offences added, if any	29 of NDPS Act
6.	Date of passing of impugned order	18.08.2023

2. It is contended on behalf of the accused-petitioners that no case for the alleged offences is made out against them and their incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioners and they have been made accused based on conjectures and surmises.

3. Contrary to the submissions of learned counsels for the petitioners, learned Public Prosecutor opposes the bail applications and submit that the present case is not fit for enlargement of accused on bail.

4. I have considered the submissions made by both the parties and have perused the material available on record.

5. Admittedly, the recovery alleged to have been made from the bags, which were carried out by the petitioners in their hand, but no notice under Section 50 of NDPS Act was given. The Seizing Officer has also been examined in the trial and he has admitted that no such notice under Section 50 of NDPS Act was given to the accused persons and their personal search was made without issuing any notice.

6. The legal position is now no more *res integra* that before making a personal search, a notice under Section 50 of NDPS Act is required to be given and in absence whereof the recovery vitiates. Reliance can be placed upon the judgment dated 29.10.2010 rendered by Hon'ble the Supreme Court in the case of ***Vijaysinh Chandubha Jadeja Vs. State Of Gujarat*** reported in ***AIR 2011 SC 77***, wherein it has been propounded that non compliance of Section 50 of the NDPS Act could vitiate the recovery.

7. I am of the view that in the given circumstances, embargo of Section 37 of NDPS Act would not come. There is high probability that the trial may take long time to conclude and the petitioners are in custody from last 3 years and 10 months. In light of these facts and circumstances, it is deemed suitable to grant the benefit of bail to the petitioners in the present matter.

8. Accordingly, the instant bail applications under Section 439 Cr.P.C. are allowed and it is ordered that the accused-petitioners as named in the cause title shall be enlarged on bail provided each of them furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the

learned trial Judge for their appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

Abhishek Kumar
S.Nos.68 & 69