HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous 3rd Bail Application No. 2868/2024

Ramesh S/o Girdhari Ram, Aged About 45 Years, R/o Jajiwal Dhora, Police Station Banar, Dist. Jodhpur (East).
(At Present Lodged In Central Jail, Jodhpur)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent

For Petitioner(s)	:	Mr. Ramdev Rajpurohit
For Respondent(s)	:	Mr. A.R. Choudhary, PP

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI
Order

15/04/2024

1. Petitioner has been arrested for violating the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), as per FIR No. 66/2023 registered at Police Station Banar in District Jodhpur City (East) in respect of offence(s) punishable under Section(s) 8/15 of NDPS Act and 3/25 of Arms Act. He has approached this Court under Section 439 of the Cr.P.C. seeking bail. Earlier two applications for bail were disposed of because they were not pressed or withdrawn by the petitioner.

2. On the basis of a seizure effected by S.H.O. of police station Banar (District Jodhpur), a formal FIR mentioned above was registered against the accused alleging *inter alia* that based on an information received, the Station House Officer of Banar police station, during a blockade after the sunset, recovered 660 kgs. of illegal poppy straw from the possession of the applicant Ramesh in an unnumbered Isuzu car.

3. Learned counsel representing the petitioner vehemently argued that the statement of seizure officer Sita Ram has already been recorded during the trial. He drew the attention of the Court to the statements made by him. His contention is that in the present case, the mandatory legal provisions related to the method of drawing samples and Section 42 of the NDPS Act regarding night searches and satisfaction of the seizure officer have not been followed during the search and seizure proceedings. Prima facie, the seizure is rendered illegal due to these non-compliances of mandatory seizure and sampling procedures. It is also argued that the petitioner is an innocent person and a false case has been fabricated against him; that the prosecution's case is based on surmises and conjectures instead of sound legal evidence. With the aforementioned submissions, it was prayed that the present petition be allowed and the petitioner may be granted bail.

4. Whereas, learned Public Prosecutor would submit that contraband of commercial quantity has been seized from the accused and the restrictions of Section 37 of the NDPS Act clearly operate against the petitioner. Keeping in view the antecedents and gravity of offence alleged to have been committed by him, applicant does not deserve any leniency rather he needs to be dealt with severely. He thus, craves rejection of the petitioner's bail application.

5. Heard arguments advanced by learned counsel for the applicant, learned public prosecutor and carefully perused the entire material available on record.

6. Perusal of record reveals that the seizure officer Sita Ram in his deposition during the trial has deposed that the sun had set when EX-P1 information was recorded. Despite leaving the police station after sunset he did not obtain a search warrant for night search from the Magistrate nor was a separate memo was prepared on the reasons for not obtaining the search warrant. Section 42 (1) of the Act indicates that any authorized officer can carry out search between sunrise and sunset without warrant or authorization. The scheme further indicates that in the event, when the search is to be made between sunset and sunrise, warrant would necessary unless the officer has reason to believe that a search warrant or authorization cannot be obtained without affording the opportunity to the offender to escape. Besides it, the grounds of belief have to be recorded in the writing by the seizure officer. It is not the statement of seizure officer that he did not have sufficient time to obtain warrant or authorization without affording opportunity to the petitioner to escape or conceal the evidence. He also has not recorded reason for such belief in terms of proviso to Section 42 (1) of the NDPS Act. The seizure officer has deposed that samples were drawn immediately after the seizure in the absence of a Magistrate. Prima facie the act of seizure officer of drawing samples from the contraband drug at the time of seizure is not in conformity with the law, which brings the case of prosecution under cloud about the prosecution’s case that substance recovered was a contraband. In view of the deposition of seizure officer as narrated above, prima facie there appears to be serious gray areas in the case against the petitioner.

7. In this view of the matter, this Court is of the opinion that conditions of Section 37 of the NDPS Act are duly satisfied qua the petitioner, forasmuch this Court feels that the petitioner has available to him substantial grounds so as to question the prosecution case. This Court without commenting on the merits of the case, in the facts and circumstances peculiar to this case and for the reasons mentioned above, the petitioner makes a case for bail.

8. Consequently, the present third bail application is allowed and it is directed that the accused-petitioner **Ramesh S/o Girdhari Ram**, arrested in connection with the F.I.R. No.66/2023, registered at Police Station Banar, District Jodhpur City (East) shall be released on bail provided he furnishes a personal bond and two surety bonds of sufficient amount 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. This order is subject to the condition that accused, within 7 days of his release and sureties, on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C in future.

(RAJENDRA PRAKASH SONI),J

50-Suraj/-