HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous **2nd** Bail Application No. 15852/2023

Dinesh S/o Devaram Vishnoi, Aged About 27 Years, R/o Ramnagar Keriyo Ki Dhani P.s. Kaprda, Dist. Jodhpur,raj, (At Present Lodged In Central Jail, Rajsamand)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s)	:	Mr. S.S. Kheechar.
For Respondent(s)	:	Mr. Salim Khan, PP.

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

12/01/2024

This second application for bail under Section 439 Cr.P.C. has been filed by the petitioner who has been arrested in connection with F.I.R. No.101/2022 registered at Police Station Baar, District Rajsamand, for offences under Sections 8/15 and 8/29 of the NDPS Act.

Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material available on record.

Learned counsel for the petitioner submitted that as per prosecution, on 05.10.2022, police apprehended the present petitioner for alleged transportation of contraband (poppy husk/straw) weighing 149 Kgs. in a white coloured Brezza Car. Learned counsel submitted that there is absolutely no evidence available on record indicating involvement of the petitioner in commission of the alleged crime. It was urged that in the absence of any material indicating that the offending vehicle belonged to

the present petitioner or that the petitioner had loaded the material recovered from the offending vehicle, he cannot be charged for the offence under Section 15 of the NDPS Act.

Learned counsel submitted that the petitioner has no criminal antecedents; investigation against him has already been completed and the trial of the case is likely to consume sufficiently long time. On these grounds, he implored the Court to enlarge the petitioner on bail.

Per contra, learned Public Prosecutor has opposed the bail application.

Having considered the rival submissions, facts and circumstances of the case and after perusing challan papers, this Court prima facie finds that as per prosecution, during routine rounds, when the police reached near *Tamatar Mandi,* the petitioner was found sitting with a few persons who had stopped him as he seemed suspicious and when he was interrogated, it came to the surface that he was transporting contraband greater than commercial quantity in a white coloured Brezza Car. This Court prima facie finds that except the disclosure statements of the petitioner and the interrogation note, there is absolutely no evidence available on record indicating involvement of the petitioner in commission of the alleged crime, neither the offending vehicle belongs to the petitioner.

In the *prima facie* opinion of this Court, in the absence of any direct/corroboratory evidence, the petitioner cannot be charged for the offence under Section 8/25 of the NDPS Act and

thus, the rigors of Section 37 of the NDPS Act are duly satisfied in the instant case.

Thus, without expressing any opinion on merits/demerits of the case, this Court is inclined to enlarge the petitioner on bail.

Consequently, the second bail application under Section 439 Cr.P.C. is allowed. It is ordered that the accused-petitioner **Dinesh S/o Devaram Vishnoi** arrested in connection with F.I.R. No.101/2022 registered at Police Station Baar, District Rajsamand, shall be released on bail, if not wanted in any other case, provided he furnishes a personal bond of Rs.1,00,000/- and two sureties of Rs.50,000/- each, to the satisfaction of learned trial court, for his appearance before that court on each & every date of hearing and whenever called upon to do so till completion of the trial.

(KULDEEP MATHUR),J

59-Tikam/-