HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 619/2025

Vaktaram S/o Shri Meetharam, Aged About 32 Years, R/o Berasfali Malera, Tehsil And P.s. Pindwara, Dist Sirohi (Presently Lodged In Dist Jail Sirohi)

----Petitioner

Versus

State Of Rajasthan, Through PP ----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 620/2025

Ajmal S/o Shri Sakaram, Aged About 32 Years, R/o Dhakela Fali Vasa , Tehsil Pindwara, Presently Janapur, Dist Sirohi (Presently Lodged In Dist Jail, Sirohi)

----Petitioner

Versus

State Of Rajasthan, Through PP ----Respondent

For Petitioner(s)	:	Mr. Ravi Panwar
For Respondent(s)	:	Mr. Hathi Singh Jodha, PP

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

14/01/2025

1. These applications for bail under Section 439 Cr.P.C. have been filed by the petitioners who have been arrested in connection with F.I.R. No.163/2024 registered at Police Station Pindwara, District Sirohi, for the offence punishable under Section 8/20 of the NDPS Act.

2. Learned counsel for the petitioners submitted that the petitioners have been falsely implicated in the present case. As per the prosecution, acting upon a secret information, a team of Police Station Pindwada raided the fields near Mauja Janapur Kojda Road and found 800 ganja plants inside two fields owned by the Shri Laxman and Shri Ajmera.

3. Learned counsel for the petitioners submitted that the recovery of the contraband was from ganja plants growing on the

agricultural field, thus, conscious possession of the petitioners cannot be deduced. It was also submitted that as the whole plants were weighed without removing the stems, roots, leaves etc., the total weight of the 350 recovered plants of ganja recovered from the field cultivated by the petitioner- Vaktaram, i.e. 22.4 kilograms, can be safely assumed to be below the commercial quantity. Therefore, the embargo contained under Section 37 would not be attracted.

4. Lastly, learned counsel for the petitioners submitted that the petitioners are in judicial custody; challan has already been filed and the trial of the case will take sufficiently long time to conclude, therefore, the benefit of bail may be granted to the accused-petitioners.

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

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

7. Having considered the rival submissions, facts and circumstances of the case, this Court *prima faice* finds that the case of the prosecution is that the petitioners were cultivating ganja plants in their fields and the quantity of the recovered plants is well above the commercial limit specified for contraband ganja.

8. The notification in effect that specifies small and commercial quantity for narcotic drugs and psychotropic substances is S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt. II Sec. 3 (ii) dated 19th October, 2001 and the commercial quantity specified therein for ganja is 20 kgs. for the

purpose of determining the total weight of the recovered contraband ganja, the whole plants were taken into consideration, including the seeds, roots, stems and leaves, along with the soil as well whereas only the flowering or fruiting tops of the cannabis plants should have been taken for weighing of contraband ganja as per the defining clause under NDPS Act. As there was no bifurcation of seeds and leaves from the flowering or fruiting tops before weighing the recovered contraband. Thus, it is safe to infer that the actual weight of recovered ganja would be less than the claimed weight and therefore, below the stipulated commercial quantity.

9. The cultivation of *"any cannabis plant"* is prohibited and made an offence under sub-clause (b) of Section 8 of the NDPS Act. Further, it is imperative to mention Section 20 of the NDPS Act, which discusses the punishment for contravention in relation to cannabis plant and cannabis. Section 20 of the NDPS Act reads as follows:-

> *"20. Punishment for contravention in relation to cannabis plant and cannabis.-*
> *Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,-*
> *(a)cultivates any cannabis plant; or*
> *(b)produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-*
> *(i)where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees*
> *(ii)where such contravention relates to sub-clause (b),—*
> *(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;*
> *(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;*
> *(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may*

extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

10. On a perusal of Section 20 of the NDPS Act, this Court finds that contravention of provision of the NDPS Act by cultivation of any cannabis plant is covered in clause (a) of Section 20 and the maximum punishment for contravention of clause (a) of Section 20 is of a term of ten years rigorous imprisonment which has been prescribed without any specification of quantities. Thus, the corresponding punishment-prescribing provision for offence under Section 8(b), relating to cannabis plant, would be Section 20(a)(i).

11. Grant of bail for offences stipulated in the NDPS Act is prohibited by the provision contained under Section 37. Section 37 states that any person who is accused of an offence under Sections 19, 24 or 27A and of an offence involving commercial quantity cannot be granted bail. In the present case, neither the offence in the present case is covered by Sections 19, 24 or 27A of the NDPS Act and nor does the recovered ganja falls under the category of commercial quantity. Therefore, it can safely be inferred from the above observations that the petitioner need not face the rigours of Section 37 with regard to provision of bail. A co-ordinate Bench of this Court has passed a detailed order in the case of ***Kallu Nath v. State of Rajasthan (S.B. Criminal Misc. IV Bail Application No.2676/2022)***, wherein in a similar matter relating to cultivation of opium poppy, bail was granted to the accused as the embargo contained in Section 37 of NDPS Act was not attracted.

12. Thus, without expressing any opinion on merits/demerits of the case and keeping in mind the dicta contained in the judgment passed in **Kallu Nath (supra)**, this Court is of the opinion that the bail application filed by the petitioners deserves to be accepted.

13. Consequently, the bail applications under Section 439 Cr.P.C. are allowed. It is ordered that the accused-petitioners **(1) Vaktaram S/o Shri Meetharam and (2) Ajmal S/o Shri Sakaram** arrested in connection with F.I.R. No.163/2024 registered at Police Station Pindwara, Dist. Sirohi, shall be released on bail, if not wanted in any other case, provided **each of them** 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 their appearance before that court on each & every date of hearing and whenever called upon to do so till completion of the trial.

14. It is however, made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application. The trial court shall not get prejudiced by the same.

(KULDEEP MATHUR),J

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