HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous **2nd** Bail Application No. 13175/2024

Hari Kishan S/o Ram Karan Gurjar, Aged About 22 Years, R/o Hansiyawas ,babyachya, P.s.gegal,dist. Ajmer,raj. (At Present Lodged In Central Jail Udaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Miscellaneous **2nd** Bail Application No. 1019/2025

Kalu Mohammad S/o Fatu Khan, Aged About 46 Years, R/o Babycha P.s. Gegal Dist Ajmer Raj (At Present Lodged In Dist Jail Bhilwara)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Deepak Menaria Mr. Sikander Khan
For Respondent(s)	:	Mr. Shrawan Singh Rathore, PP

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

05/02/2025

These second applications for bail under Section 483 BNSS (439 Cr.P.C.) have been filed by the petitioners who have been arrested in connection with F.I.R. No.27/2023 registered at Police Station Pur, Dist. Bhilwara, for the offences punishable under Sections 8/15, 29 of NDPS Act and Section 477 of IPC.

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

Learned counsel for the petitioners submitted that the petitioners have been falsely implicated in the present case. Learned counsel submitted that nothing has been recovered from the conscious possession of the present petitioners.

Drawing attention of the Court towards the FIR, the challan papers and the statements of the Investigating Officer (PW.5) recorded before the competent criminal Court, learned counsel submitted that as per the prosecution, the contraband (poppy husk/straw) weighing 215.200 kgs. was recovered from an abandoned pickup vehicle bearing registration No.RJ-14-GG-9701. The petitioners have been made accused in the present case solely on the basis of FASTag of the offending vehicle. Learned counsel submitted that as per the prosecution, the amount of FASTag at toll plaza situated at National Highway-48 was deducted from the FASTag affixed on the windshield of the offending vehicle which was connected/registered with mobile No.9983551145 in the name of Ram Swaroop. When Ram Swaroop was questioned by the Investigating Agency, he stated that mobile No.9983551145 is being used by his younger brother Harikishan (petitioner). The petitioner-Harikishan in the information divulged by him under Section 27 of the Indian Evidence Act stated that on the date of the alleged incident, the offending vehicle was being driven by the petitioner-Kalu Mohammad.

Learned counsel submitted that though the petitioners have been implicated in the present case on the basis of the FASTag allegedly affixed on the windshield of the offending vehicle but the Investigating Officer (PW.5) during his Court statements has stated that no such FASTag was recovered by him. Further, there is nothing

on record to establish that any FASTag was connected/registered with the mobile phone allegedly used by the petitioner. Learned counsel submitted that the statements of the Investigating Officer are sufficient to show that the petitioners have been made accused in the present case solely on the basis of conjunctures and surmises without there being any direct/corroboratory evidence available against them on record.

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

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

The relevant portion of the cross examination of the Investigating Officer (PW.5) is reproduced below for ready reference:-

> "*यह कहना सही है कि आरजे 14 जीजी 9701 प्रहलाद कुम्हार पुत्र श्री नारायण, जयगणेश नगर जयपुर निवासी के नाम पर दर्ज होने की जानकारी मुझे प्रदर्शपी 10 के जरिए हुई थी। यह कहना सही है कि प्रदशप्री 10 के जरिए उक्त वाहन आरजे 14 जीजी 9701 की वाहन स्वामी की जानकारी हो जाने के पश्चात मैने वाहन स्वामी से कोई अनुसंधान नहीं किया था तथा न ही वाहन के दस्तावेज प्राप्त किये थे। यह कहना सही है कि आरजे 14 जीजी 9701 के रजि. नम्बर की जानकारी प्राप्त करने बाबत आरटीओ जगतपुरा को भी तहरीर नहीं दी। यह कहना सही है कि प्रदर्शपी 56 में अंकित मोबाईल नम्बर 9983551145 व फास्टैग आईडी 34161FA8203288ACOEDF7DA0 एवं वालेट आईडी 19000012492420 की जानकारी मुझे दिनांक 20.03.2023 व इससे पूर्व किस प्रकार हुई ऐसी कोई साक्ष्य न्यायालय पत्रावली में नहीं है। अजखुद कहा कि मुझे थाने की मेल से प्राप्त हुई थी। यह कहना सही है कि उक्त थाना सुभाषनगर का मेल पत्रावली पर नहीं है। यह कहना गलत है कि वाहन नम्बर आरजे 14 जीजी9701 पर लगा फास्टैग आईडी 34161FA8203288ACOEDF7DA0 का उपयोग उपभोग वाहन का मालिक प्रहलाद कुम्हार करता हो। यह कहना सही है कि प्रदर्शपी 56 में अंकित*

मोबाईल न 9983551145 रामस्वरूप गुर्जर के नाम से हो इस संबंध में कोई सीडीआर, केफे आईडी मय 65बी प्रमाण पत्र पत्रावली पर नहीं है। अजखुद कहा कि जरिए ई–मेल इसकी सीडीआर, केफे आईडी मंगवाई थी। यह कहना सही है कि थाने का मेल न्यायालय पत्रावली में नहीं है। यह कहना सही है कि मुल्जिम हरिकिशन की गिरफतारी से पूर्व जप्तशुदा पिकअप बांदनवाडा, लाबिया, खेडी टोल से गुजरी हो तथा उसमें फास्टैग आईडी मोबाईल न. 9983551145 की लगी हो इस सबंध में अनुसंधान किया गया हो ऐसी कोई साक्ष्य पत्रावली पर नहीं है। अजखुद कहा कि विभिन्न टोल प्लाजों से सुचना प्राप्त जरिए मेल की थी। यह कहना सही है कि उक्त मेल को मैने पत्रावली में अनुसंधान का हिस्सा नही रखा।"

Having considered the rival submissions, facts and circumstances of the case, this Court *prima facie* finds that the contraband has not been recovered from the conscious possession of the petitioners; though the petitioners have been implicated in the present case on the basis of the FASTag affixed on the offending vehicle and the mobile phone connected/registered with it but in view of the statements of the Investigating Officer (PW.5) no corroboratory evidence in this regard has been procured/made part of the record by the Investigating Agency. This Court also *prima facie* fidns that the petitioners do not have any criminal antecedents. The twin conditions enumerated under Section 37 of the NDPS Act are duly satisfied in the present case. Thus, without expressing any opinion on merits/demerits of the case, this Court is of the opinion that the bail applications filed by the petitioners deserve to be accepted.

Consequently, these second bail applications under Section 483 BNSS (439 Cr.P.C.) are allowed. It is ordered that the accused-petitioners **(1) Hari Kishan S/o Ram Karan Gurjar and (2) Kalu Mohammad S/o Fatu Khan** arrested in connection with F.I.R. No.27/2023 registered at Police Station Pur, Dist. Bhilwara, 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.

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.

A copy of this order be placed in each file.

(KULDEEP MATHUR),J

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