HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous 3rd Bail Application No. 14134/2024

Narendra @ Naresh S/o Shri Narayan, Aged About 25 Years, R/o Khedi Ka Kheda, Post Sekhavas, Ps Baar, Tehsil Bheem, Dist Rajsamand. (Presently Lodged In Dist Jail , Jodhpur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Miscellaneous 2nd Bail Application No. 2614/2024

Vishnu S/o Banshi Lal, Aged About 20 Years, R/o Surpura, P.s Mandore, Dist. Jodhpur. (At Present Lodged In Central Jail Jodhpur).

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

S.B. Criminal Miscellaneous Bail Application No. 12880/2024

Raviraj S/o Shri Ranglal, Aged About 26 Years, R/o Ruppura, P.s. Beghu, District Chittorgarh (Raj.) (Presently Lodged In Central Jail Jodhpur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. S.K. Bhati Ms. Shobha Prabhakar Mr. Ashok Khillery
For Respondent(s)	:	Mr. Surendra Bishnoi, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

29/01/2025

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

S.No.	Particulars of the Case	
1.	FIR Number	163/2022
2.	Concerned Police Station	Dangiyawas
3.	District	Jodhpur City East
4.	Offences alleged in the FIR	Section 8/15 of the NDPS Act
5.	Offences added, if any	-
6.	Date of passing of impugned order (SBCRLM3rdB No.14134/2024)	05.10.2024
6.A	Date of passing of impugned order (SBCRLM2ndB No.2614/2024)	24.01.2024
6.B	Date of passing of impugned order (SBCRLMB No.12880/2024)	03.08.2024

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 an accused based on conjectures and surmises.

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

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

5. perusal of the record revealing that on 16.10.2022, a vehicle was intercepted by the police whereupon commercial quantity of poppy husk came to be recovered from it loaded in 14 bags. Accused Vishnu and Narendra were arrested and chargesheeted. They are behind the bars since then. Earlier bail applications of Narendra and Vishnu were dismissed by this Court vide orders dated 08.02.2024 & 10.01.2024 passed in SBCRLMB Nos.15279/2023 & 14241/2023 but a liberty was given to renew the prayer after change of circumstances. After lapse of almost two and a half years, the petitioners approached this court again. Upon moving the instant bail applications, this Court sought a report from the trial Judge. On 25.11.2024, a report was sent by the learned trial Judge, averring therein that the cognizance of the offence was taken on 06.06.2023 and then charges were framed, but only one witness, Kanhaiya Lal, was examined in the trial as PW-1. The learned Judge informed the Court that since a supplementary charge sheet came to be submitted against one additional accused Ravi Raj on 10.07.2024, therefore again the cognizance was taken and the parties shall be heard on the question of charge. It seems that a *de novo* trial shall be held now. The said report is taken on record.

6. In the circumstances referred above and looking to the long incarceration of the accused, this Court is lien to examine the niceties of the matter.

7. PW-1 KanhaiyaLal happened to be the SHO of the Police Station Dangiawas who along with his team conducted search and seizure in the matter. At page No.8 of his statement in para No.2,

he brazenly admitted that he did not know about the Circular No.1/1988 issued by the Government regarding directions on taking samples and seizure. He further admits that the inventory as per section 52A of the NDPS Act was made after one year of the seizure. He further admits that no samples were taken in the presence of Judicial Magistrate. The admission regarding defect in Ex.P/7 and 8, the notices under Section 50 of the NDPS Act is a further legal question to be examined in light of the judgments of Hon'ble the Supreme Court but this is not being done at this stage as the same the same may influence the outcome of the trial. This witness further admits that his personal seal was put on the articles but the impression on which is not there in Malkhana Register Ex.P/23. The seized article No.15 to 28 regarding control sample has affixing of seal of SHO Police Station Dangiawas instead of a personal seal. There is no endorsement in Malkhana register regarding deposition of Ex.P/9 & Ex.P/18. Even the article which was deposited in Malkhana and endorsement of which was made on Malkhana Ex.P/23 the signature of the Seizing Officer is misplaced.

8. There is a strong submission of the learned counsel for the petitioners regarding non-compliance of the mandatory provisions of the NDPS Act and as per them non-compliance makes the recovery vitiate. At this stage, this Court is not discussing the defects of the prosecution as doing so may put a dent on prosecution story but at the same time, this cannot be ignored that for last two years and nine months two petitioners are in custody and the other one is made an accused on the basis of

confessional statement of the principal accused. Thus, in my view, in the circumstances mentioned above embargo contained under Section 37 of the NDPS Act would not apply.

9. Considering the prolonged incarceration, delay in trial, and apparent procedural lapses, this Court deemed suitable to grant the benefit of bail to the petitioners in the present matter. Needless to say, none of the observations made herein under shall affect the rights of either of the parties during trial and this Court refrains from commenting on the niceties of the matter.

10. 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

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