HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. II Bail Application No. 13453/2024

Bhaga Ram S/o Jetha Ram, Aged About 35 Years, R/o Village Bheser Kutri, Mathania, Jodhpur (Raj.) (At Present Incarcerated In Central Jail, Jodhpur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Vinod Kumar Sharma Mr. Aditya Sharma
For Respondent(s)	:	Mr. Sharwan Singh Rathore, P.P.

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

22/01/2025

1. This second application for bail under Section 483 BNSS (Section 439 Cr.P.C.) has been filed by the petitioner who has been arrested in connection with F.I.R. No.233/2023 registered at Police Station Mathania, Jodhpur City East, for offences under Sections 8/15 of the NDPS Act.

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

3. Learned counsel for the petitioner submitted that as per the prosecution, contraband (poppy-husk/straw) weighing 172.70 Kgs. was recovered in 9 sacks from an abandoned and locked house of the present petitioner situated in village Bhowser Kutri, Tehsil Osian/Tiwari. Learned counsel submitted that as a matter of fact the house from where the contraband greater than commercial quantity was recovered was in the joint

ownership/possession of the petitioner and his brothers namely Roopa Ram and Bhagirath. Learned counsel further submitted that there is nothing on record to indicate that the room from where the contraband was recovered, was within the exclusive ownership/possession of the present petitioner.

4. Drawing attention of the Court towards the statements of the PW.1 Kehra Ram, PW.2 Shera Ram, PW.3 Jassa Ram, PW.4 Mohan Ram, PW.5 Dhalla Ram, PW.6 Durga Ram, PW.7 Dinesh, learned counsel for the petitioner submitted that these material prosecution witnesses, during their Court statements have not supported the prosecution story and have turned hostile. Lastly, learned counsel for the petitioner submitted that the petitioner is in judicial custody; the investigation against the present petitioner has already been completed and the trial of the case will take sufficiently long time to be concluded, therefore, the benefit of bail may be granted to the accused-petitioner.

5. *Per contra*, learned Public Prosecutor has vehemently opposed the bail application. Learned Public Prosecutor submitted that looking to the seriousness of allegation against the petitioner, he does not deserve to be enlarged on bail, however, he was not in a position to refute the fact that the contraband greater than commercial quantity was not recovered form the conscious possession of the present petitioner. He was also not in a position to refute the fact that the house from where the contraband greater than commercial quantity was allegedly recovered by the investigating agency is in the joint ownership/possession of the petitioner and his brothers.

6. Having considered the rival submissions, facts and circumstances of the case, without expressing any opinion on merits/demerits of the case, this Court is inclined to enlarge the petitioner on bail.

7. Consequently, the second bail application under Section 483 BNSS (Section 439 Cr.P.C.) is allowed. It is ordered that the accused-petitioner **Bhaga Ram S/o Jetha Ram** arrested in connection with F.I.R. No.233/2023 registered at Police Station Mathania, Jodhpur City East, 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.

8. 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

202-AnilKC/-