HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 326/2025

Mohan Lal S/o Mala Ram, Aged About 28 Years, R/o Faglu Ka Talla, Dhanau P.s. Dist Barmer (Lodged In Central Jail , Udaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 14230/2024

Hanuman Ram S/o Sri Mohan Lal, Aged About 25 Years, R/o Shashi Ki Beri, Faglu Ka Tala, Dhanau P.s., Dist Barmer. (Lodged In Dist Jail, Udaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Kishan Lal Vishnoi Mr. Vijay Raj Bishnoi Mr. Ashok Kumar
For Respondent(s)	:	Mr. Shrawan Singh Rathore, PP

HON'BLE MR. JUSTICE KULDEEP MATHUR
Order

29/01/2025

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.146/2022 registered at Police Station Gogunda, District Udaipur for the offences punishable under Sections 8/15 of NDPS.

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

Drawing attention of the Court towards the FIR and the statements of the investigating officer- Yogendra Vyas (PW-01)

recorded before the competent criminal Court, learned counsel for the petitioners submitted that the petitioners have been implicated in the present case solely on the basis of suspicion without there being any direct/ circumstantial evidence available on record indicating involvement of the petitioners in commission of alleged crime.

Learned counsel submitted that as per the prosecution, on 05.04.2022, a police team of P.S. Gogunda, during routine *nakabandi* flagged down one pickup vehicle. The driver of the pickup vehicle on seeing police personnel accelerated the speed of the vehicle and after speeding for some time, thereafter fled away by leaving the vehicle in the middle of the road. Upon chasing them, during the search of the vehicle, contraband (poppy husk/straw) weighing 455.370 Kgs. was recovered.

Learned counsel submitted that though as per the prosecution, petitioners were the occupants of the offending vehicle but no evidence is present on record to establish that the recovered contraband or the offending vehicle belongs to the present petitioners.

Lastly, learned counsel 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-01) is reproduced below for ready reference:-

"प्रकरण की पत्रावली मुझे दिनांक को 29.10.2022 को प्राप्त हुई थी। प्रकरण की पत्रावली प्राप्त कर अवलोकन से अभियुक्तगण के बारे में जानकारी प्राप्त की। जिन सीसीटीवी फुटेज के आधार पर अभियुक्तगणों को गिरफ्तार किया उन सीसीटीवी फुटेज की सीडी मैने प्राप्त नहीं की अजखुद कहा कि सीसीटीवी फुटेज के फोटो पूर्व अनुसंधान अधिकारी द्वारा पत्रावली में सलग्न किये हुऐ थे। यह कहना सही है कि पूर्व अनुसंधान अधिकारी द्वारा प्रस्तुत सीसीटीवी फुटेज प्राप्त किये गये थे इनमें वक्त घटना वाहन चालक कौन था नहीं दिखाई दे रहा है। मेरे द्वारा टौलनाके पर कार्यरत किसी भी कर्मचारी के बयान लेखबद्ध नहीं किये गये थे। दौराने अनुसंधान मेरे द्वारा वक्त घटना वाहन चालक की पहचान के सम्बन्ध में कोई पहचान परेड नहीं करवाई थी। वाहन चालक के कद, काठी, हुलिया के बारे में किसी भी गवाह से कोई अनुसंधान नहीं किया था। वक्त घटना वाहन टौलनाके से गुजरा हो इस सम्बन्ध में टौल पर्ची, फास्टटेक, के बारे में मैरे द्वारा कोई अनुसंधान नहीं किया गया था। जिस मोबाईल नम्बर के आधार पर मोहनलाल को प्रकरण में अभियुक्त माना वो मोबाईल नम्बर मोहनलाल के नाम पर हो ऐसा कोई दस्तावेज पत्रावली पर मौजुद नहीं है, उक्त मोबाइल नम्बर की सिम व काम में लिया गया मोबाईल को दौराने अनुसंधान जब्त नहीं किया गया और ना ही उक्त मोबाईल सिम व मोबाईल मुझे मिले। दौराने अनुसंधान ऐसी कोई दस्तावेजी साक्ष्य नहीं मिला था मोहनलाल को फॉरवहीलर चलाना आता हो। प्रकरण में जब्त शुदा वाहन का स्वामित्व मोहनलाल का हो ऐसा कोई दस्तावेज साक्ष्य पत्रावली पर मौजुद नहीं है।"

Having considered the rival submissions, facts and circumstances of the case so also having perused the statements of the investigating officer (PW-01), this Court *prima facie* finds sufficient force in the argument of the learned counsel for the petitioners that the petitioners have been implicated in the present case mainly on the basis of suspicion. This Court further *prima facie* finds that the contraband was not recovered from the conscious possession of the present petitioners. 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 bail applications under Section 439 Cr.P.C. are allowed. It is ordered that the accused-petitioners **(1) Mohan Lal S/o Mala Ram and (2) Hanuman Ram S/o Sri Mohan Lal** arrested in connection with F.I.R. No.146/2022 registered at Police

Station Gogunda, District Udaipur 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

239-240 divya/-