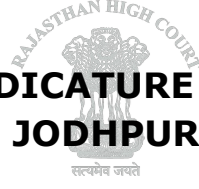




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**



S.B. Criminal Miscellaneous Bail Application No. 11940/2023

Mohan Lal @ Mahendrapal S/o Khema Ram Jat, Aged About 18  
Years, R/o Sava Ps Sadar Barmer Dist. Barmer At Present  
Lodged In Dist. Jail Chittorgarh

-----Petitioner

Versus

The State Of Rajasthan, Through Pp

-----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 11959/2023

Ramesh S/o Shri Girdhari Ram @ Girdhari Lal Bishnoi, Aged  
About 45 Years, R/o Jajiwad Dhora Banar Ps Dist. Jodhpur Lodged  
In Dist. Jail Chittorgarh

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

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For Petitioner(s) : Mr. Kailash Bishnoi  
Mr. Jai Kishan Haniya  
For Respondent(s) : Mr. M.S. Bhati, P.P.

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**HON'BLE MR. JUSTICE KULDEEP MATHUR**

**Order**

**22/09/2023**

These two applications for bail under Section 439 Cr.P.C. has  
been filed by the petitioners who have been arrested in connection  
with F.I.R. No.75/2022 registered at Police Station Bassi, District  
Chittorgarh for the offences under Sections 8/15, 8/18 and 8/29  
of the NDPS Act.



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

At the outset, learned counsel for the petitioners submitted that co-accused persons namely Chetan, Sunil, Gopal, Rajunath, Kailash, Jagdish and Swaroop have already been enlarged on bail by a coordinate Bench of this Court vide order dated 03.07.2023, passed in S.B. CRLMB No.7634/23 which is reproduced below for ready reference.

"1. The prayer made in this bail petition filed under Section 439 of the Code of Criminal Procedure (for short "the Code") is for grant of bail in connection with crime registered pursuant to First Information Report Number 75/2022 of Police Station Bassi, District Chittorgarh in respect of offence(s) punishable under Section(s) 8 / 15, 8 / 22 a n d 8 / 29 of the NDPS Act.

2. Before I proceed to examine the rival contentions in connection with the questions of bail, it would be appropriate to briefly state the facts of the present case which are that on 02.05.2022, at about 01:15 PM, an enclosure (बाड़ा) of a person named Shriram Sutar, located in Baldarkhan village was raided by S.H.O. Ganpat Singh of Police Station Bassi, District Chittorgarh, where apart from other vehicles, vehicle of petitioner Chetan was also found standing with their vehicles. After due formalities, Petitioner Chetan was apprehended by the police with 241.200 Kgs. of poppy straw and 4.350 Kgs. of opium, which he had in the scorpio car bearing registration number GJ-01-RN-2349 controlled by the petitioner and one other person. After investigation, the petitioner has been charge-sheeted in the case.

3. Learned counsel for the petitioners has submitted that the campus which was raided, belonged to a person named Shriram Suthar and admittedly many vehicles of other persons were parked there. There has been non-compliance of the Standing Instruction No. 1/88 issued by



the Narcotics Control Bureau in failure in sending the samples to Forensic Science Laboratory (for short 'the FSL') within seventy two hours of the seizure. Relying upon the judgment of Hon'ble the Supreme Court in Noor Aga Vs. State of Punjab & Anr., reported in (2008) 16 SCC 417, he submitted that non-compliance of the Standing Order entitles him for bail. He, therefore, prayed for release of the petitioner on bail.

4. Opposing the prayer, Shri Arun Kumar, learned Public Prosecutor submitted that the petitioner has been found in possession of the contraband of commercial quantity and in view of prima-facie evidence against him available in the charge-sheet showing his involvement in the offence, he is not entitled for the benefit of bail in view of provisions of Section 37 of the Act of 1985. With regard to delay in sending the samples to FSL beyond the period of seventy two hours, he submitted that the instructions contained in the Standing Order have directory effect only. Learned Public Prosecutor submitted that Section 37 of the Act of 1985 starts with a non-obstante clause and hence, without satisfaction of the conditions laid down therein, petitioner is not entitled for the benefit of bail.

5. As per record of the charge-sheet, the recovery of the contraband was made on 02.05.2022. The date of forwarding the sample is mentioned in the forwarding letter of the Police Station as 24.06.2022. Those samples have been forwarded from S.P. Office to FSL on 23.05.2022. The packets of sample were received in the laboratory only on 24.05.2022 i.e. beyond 72 hours of the alleged recovery. In the forwarding letter of the police station, both the date and the month are prima facie misleading and wrong. Be that as it may, the samples have been received in the FSL after 72 hours of the seizure. Learned counsel for the State has not in a position to controvert the above mentioned date of recovery of contraband and date of receipt issued by the FSL.

6. The petitioner has been in custody for over a year. After completion of investigation the charge sheet has already been filed. Trial is likely to consume time and no useful



purpose would be served by keeping him in detention for an indefinite period. The petitioner is not involved in any other case under the NDPS Act. Co-accused Rajunath S/o Kananath (Bail No. 822/2023, allowed on 28.03.2023) and Kailash S/o Bhagwati Lal @ Bhagu Meena (Bail No. 3665/2023, allowed on 16.05.2023) have already been enlarged on bail.

7. The point raised regarding delay in sending the sample to FSL and its consequences is a matter of trial. However, in the present case sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner in view of decision of State of Uttar Pradesh Vs. Hansraj @ Hansu reported in 2019 (1) CJ (Cri.) 93.

8. Keeping in view the above facts and without commenting upon the merits of the case, I deem this to be a fit case for grant of regular bail to the petitioner.

9. Consequently, the bail application is allowed. It is ordered that the accused-petitioner Chetan S/o Babu Lal Bishnoi in F.I.R.No. 75/2022, Police Station Bassi, District Chittorgarh shall be released on bail; provided he furnishes a personal bond and two surety bonds of the amount to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so and if not required by Jail Authorities in any other case. This order is subject to the condition that accused, within 7 days of his release and sureties, on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C. in future."

Learned counsel submitted that case of the present petitioner is not distinguishable from the of above-named co-accused persons who have enlarged on bail; the petitioners are in





judicial custody since 02.05.2022 and the trial of the case will take sufficiently long time.

On these grounds, he implored the court to enlarge the petitioners on bail.

Per contra, learned Public Prosecutor has vehemently opposed the bail applications and submitted that looking to the accusation against the present petitioner. He does not deserve to be enlarged on bail. However, he was not in a position to refute the fact that above-named co-accused persons have already been enlarged on bail by a coordinate Bench of this Court vide order dated 03.07.2023.

Having considered the rival submissions, facts and circumstances of the case, so also the fact that above-named co-accused persons have already been enlarged on bail by a coordinate Bench of this Court vide order dated 03.07.2023. This Court, without expressing any opinion on merits/demerits of the case deems it just and proper to enlarge the petitioners on bail.

Consequently, the bail applications under Section 439 Cr.P.C. is allowed. It is ordered that the accused-petitioners – **(1) Mohan Lal @ Mahendrapal S/o Khema Ram Jat** and **(2) Ramesh S/o Shri Girdhari Ram @ Girdhari Lal Bishnoi** arrested in connection with F.I.R. No.75/2022 registered at Police Station Bassi, District Chittorgarh 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.

**(KULDEEP MATHUR),J**

113-114 - Ravi Khandelwal

