

HIGH COURT OF MADHYA PRADESH

MCRC No. 19405 of 2022

(NAVNEET JAT Vs THE STATE OF MADHYA PRADESH)

Dated : 19.04.2022

Shri P.S.Bhadoria, learned counsel for the applicant.

Shri Ramadhar Chaubey, learned Public Prosecutor for the respondent/State.

This is the first bail application u/S.439 Cr.P.C filed by the applicant for grant of bail.

Applicant has been arrested on 12.06.2021 by Police Station, Noorabad, District Morena (MP), in connection with Crime No.130/2021 for the offence punishable under Section 8/20 of the NDPS Act.

Ajay Vaishandar of Police Station Noorabad on 12.6.2021 at 10.34 AM got secret information that three persons in Maruti Ritz Car No. CG04 HD 5153 having cannabis in their possession are coming from Gwalior to Morena. He entered the information in the daily diary. After doing formalities as per the procedure of the NDPS Act he along with force reached the spot and waited near J.K.Tyre factory. One car was coming. On seeing the police party, Driver of the Car tried to ran away, but any how they could be caught hold. Driver narrated his name as Nand Kishore, resident of Mathura, his neighbour narrated his name as Lakhavveer and the person sitting behind the seat narrated his name as Navneet Jat. All are residents of Mathura. During running away Lakhavveer got injuries. After giving them notice the car was checked. From the car 12 packets of cannabis (ganja) were found. From all 12 packets cannabis were took out and it was found as 70 kg. 100-100 gms of ganja were took out for sampling. From the joint possession of accused Nand Kishore,

Lakhanveer and Navneet Jat aforesaid cannabis were seized and they were arrested and the car was seized. Thereafter, a crime under the aforesaid offence was registered. **After investigation, charge sheet has been filed.**

From the side of applicant-accused it has been submitted that investigating agency committed gross negligence during investigation because before taking sample of each packets, they mixed the contraband kept in 12 packets. Infact they had to take sample from each packets. In support of their contention learned counsel for applicant-accused has relied on judgment passed by **High Court of Judicature For Rajasthan At Jodhpur in CrLMB 5643/2019 (Laal Singh Vs. State of Rajasthan)** on **16.05.2019** in which the same facts were taken into consideration. In that case SHO Police Station Arnod District Pratapgarh seized 1264 kg and 800 gm poppy husk contained in 57 bags. Seizure Officer first mixed all the poppy husk contained in 57 bags, on a tarpaulin and thereafter took two samples of 1 kg from bag No.1.

The Apex Court in **Netram Vs. State of Rajasthan reported in 2014 (1) CrLR (Raj.) 163** has held that if the samples from each bag containing poppy husk/poppy straw have not been collected and test by U.N.Kit has not been conducted on each bag and if the Seizure Officer has taken out some quantity of narcotic drug from each bag and after mixing the same has taken out some portion for sample, then, the same is not in conformity with the Standing Instruction No.1/88 issued by the Narcotics Control Bureau, New Delhi,

particularly, Instruction No.1.7 and, as such, it cannot be said that the narcotic contraband recovered in the matter is of commercial quantity or above.

Learned counsel for applicant has also relied upon **Criminal Misc. Bail Application No. 9660/2021 (Omprakash Verma Vs. State of UP) passed by High Court of Judicature at Allahbad, Lucknow Bench** wherein para 6 and 11 it has been held:-

6. *Learned counsel for the applicant has submitted that the general procedure for sampling provided in Standing Order No. 01 of 1989 dated 13.06.1989 has not been complied by the opposite party. He has relied upon clause 2.1 to 2.8 of the aforesaid standing order quoted herein below :-*

"2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would

be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

*11. The Apex Court in case of **Noor Aga v. State of Punjab (2008) 16 SCC 417** , has held in paragraphs 123, 124 and 125 that the standing order in dispute and other guidelines issued by the authority having legal sanction are required to be complied by the arresting authorities. For ready reference the aforesaid paragraphs are quoted hereinbelow:-*

“(123) Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-a-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the sub ordinate authorities to comply therewith.

*(124) Recently, this Court in **State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr.**³ , following the earlier decision of this Court in **Union of India v. Azadi Bachao Andolan**⁴ , held that statutory instructions are mandatory in nature.*

(125) Logical corollary of these discussions is that the guidelines such as those present in the Standing Order can not be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse interference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

The Apex Court in **Noor Aga (supra)** has held that standing order 01/1989 is obligatory on the part of subordinate authorities to comply therewith. in the aforesaid case in hand seizure officer while taking samples has not followed the aforesaid standing order. In the aforesaid case in hand seizure officer while taking samples has not

followed the aforesaid standing orders. In both these cases Lucknow Bench of Allahbad High Court and High Court of Judicature For Rajasthan At Jodhpur had granted bail to the applicant.

Looking to the aforesaid facts and circumstances of the case and the aforesaid legal assertion, this Court is of the opinion that the application should be allowed and by allowing the application it is ordered that if the applicant furnishes cash security of Rs.1,00,000/- along with bail bond of Rs.**25,000/- (Rupees twenty five thousand only)** with one local surety in the like amount to the satisfaction of the trial Court, he should be released on bail.

The applicant-accused shall appear before the concerned Police Station once in every month.

He will present during trial before the trial Court on each and every date. In case of any default, cash security of Rs.1,00,000/- shall be forfeited.

Application stands **allowed and disposed of.**

Certified copy as per rules.

(Deepak Kumar Agarwal)
Judge