

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 18<sup>th</sup> OF NOVEMBER, 2022**

**MISC. CRIMINAL CASE No. 29915 of 2022**

**BETWEEN:-**

**CHHOGALAL S/O NARSINGH  
JAAT, AGED ABOUT 60 YEARS,  
OCCUPATION: AGRICULTURIST,  
R/O VILLAGE BODALI, TEHSIL  
SARDARPUR, DISTRICT DHAR  
(MADHYA PRADESH)**

**.....APPLICANT**

***(SHRI NILESH DAVE, LEARNED COUNSEL FOR THE APPLICANT)***

**AND**

**THE STATE OF MADHYA  
PRADESH STATION HOUSE  
OFFICER THROUGH POLICE  
STATION SARDARPUR,  
DISTRICT DHAR (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(SHRI SANTOSH SINGH THAKUR, LEARNED GA APPEARING ON  
BEHALF OF ADVOCATE GENERAL)***

**WHETHER APPROVED FOR REPORTING: YES**

*This application coming on for hearing this day, the court  
passed the following:*

**O R D E R**

Heard on IA.Nos.11296/2022 and 15002/2022, which the are applications for taking additional documents on record.

The above documents may be relevant for proper adjudication of this bail application, therefore, both the IAs are allowed and the documents are taken on record.

The applicant has filed this first bail application under Section 439 of the Code of Criminal Procedure, 1973. Applicant is in jail since 30/03/2022 in connection with Crime No.141/2022 registered at Police Station – Sardarpur, District Dhar (M.P.) for commission of offence punishable under Section 8/18 of Narcotics Drugs and Psychotropic Substances Act, 1985.

As per the prosecution story, on 30/03/2022 police got a discrete information from the informant regarding the contraband article. Act upon the said information, police party reached on the spot and recovered 500 plants of opium from an open filed which was possessed by the applicant and the weight of the opium is 25.05 Kilogram. After necessary investigation, offence has been registered against the present applicant and he has been arrested.

Learned counsel for the applicant submits that applicant is innocent and he has been falsely implicated in this matter. Applicant is in custody since 30/03/2022. There is no legal evidence available on record to connect the applicant with the

aforementioned offence. Applicant was not having any exclusive or conscious possession over the land in question. Opium plants have been recovered from an open field. Applicant is a 60 years old person. There is no specific evidence on record that applicant was carrying out cultivation over the said land. Investigation is over and charge sheet has been filed. Vivekanand (PW-1) and Pushkar (PW-2), who are the seizure witnesses, have been turned hostile and they have not supported the prosecution case. It is further contended that for offence under Section 8/18 of NDPS Act, no minimum sentence is prescribed, hence, bar under Section 37 of the NDPS Act would not be attracted in the instant case. In support of his contention, learned counsel for the applicant placed reliance upon the order passed by the coordinate Bench of this Court in the case of **Ishak S/o Chhitu Patel Vs. State of Madhya Pradesh** (passed in M.Cr.C.No.47421/2022, on 09/09/2022). Applicant is the permanent resident of Dhar district and final conclusion of trial will take considerable long time. Hence, he prays that applicant be released on bail.

*Per-contra*, learned counsel for the respondent/State opposes the bail application and prays for its rejection.

Heard learned counsel for the parties and perused the case

diary, impugned order of the Court below as well as the documents filed by the applicant.

Notification No.S.O. 1055(E), dated 19<sup>th</sup> October, 2001 published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 19<sup>th</sup> October, 2001, Note-3 provides that “Small Quantity” and “Commercial Quantity” with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

As per the notification dated 19/10/2001 in respect of cultivation of opium poppy “Small Quantity” and “Commercial Quantity” are not specified separately. No minimum sentence is prescribed under Section 8/18 of the NDPS Act, therefore, no bar is applicable under Section 37 of the NDPS Act in the instant case.

Considering all the facts and circumstances of the case, nature and gravity of allegation as also taking note of the fact that applicant who is a 60 years old person is in custody since 30/03/2022; seizure witnesses have been turned hostile and have not supported the prosecution case; since no minimum sentence is provided, therefore, bar under Section 37 of NDPS Act would not be attracted; investigation is over, therefore, no further

custodial interrogation of the applicant is required and final conclusion of trial will take considerable long time. In these circumstances, I deem it proper to release the applicant on bail.

Accordingly, without commenting upon the merits of the case, the application is allowed. It is directed that the applicant be released on bail upon his furnishing a personal bond in the sum of **Rs. 1,50,000/- (Rupees One Lac Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial Court for his appearance before the trial Court, as and when required. He shall abide by the conditions enumerated u/S. 437(3) Cr.P.C.

Certified copy as per rules.

**(ANIL VERMA)**  
**J U D G E**

*Tej*