

:1:

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 2nd OF AUGUST, 2022

MISC. CRIMINAL CASE No. 30722 of 2022

Between:-

*JAIVARDHAN S/O SUDARSHAN AGED ABOUT
20 YEARS, OCCUPATION: AGRICULTURIST ,
R/O VILLAGE RAMETEKRI, P.S. NAI ABADI
DISTRICT MANDSAUR (MADHYA PRADESH)*

.....*APPLICANT*

(BY SHRI VIKAS JAIN, ADVOCATE)

AND

*STATE OF MADHYA PRADESH THROUGH
POLICE STATION -APIPLIYAMANDI,
DISTRICT-MANDSAUR*

.....*RESPONDENT*

*(BY VALMIK SAKARGAYEN, GOVT. ADV. & SHRI MANOJ SONI,
ADVOCATE)*

.....
*This Misc. Criminal Case coming on for order this day, the court
passed the following:*

ORDER

This is the applicant's IXth bail application filed under Section 439 of Cr.P.C. The applicant is implicated in connection with Crime No.124/2018 registered at Police Station-

:2:

Pipliyamandi, District- Mandsaur MP) for offence punishable under Sections 8/15, 29 of the NDPS Act. The applicant is in custody since 16.05.2018.

Applicant's earlier bail applications have already been dismissed by this Court either as withdrawn or on merit considering the fact that 90 Kg. of Poppy Straw has been seized from his possession.

Counsel for the applicant has submitted that although the earlier applications have been dismissed on merits however, until now the applicant has never raised the ground of improper sampling of the contraband. It is further submitted that the aforesaid contraband, i.e., 90 Kg. of Poppy Straw seized from the present applicant was kept in four bags, out of which, three bags weighed 24 Kg each of Poppy Straw and one bag had of 18 kgs of Poppy Straw. It is submitted that admittedly, the contents of the four bags were mixed together on a canvas and after mixing the same homogeneously, two samples each of 500 grams were taken out from it. Thus, it is submitted that when the samples were not taken out from each of such bags and sent separately for their test, it cannot be said that all the bags seized from the present applicant contained Poppy Straw. It is also submitted that the applicant is lodged in jail since 16.5.2018 and final conclusion of the trial is likely to take long time. Thus, it is submitted that the application

be allowed.

Counsel for the State, on the other hand, has opposed the prayer and it is submitted that the applicant's earlier bail applications have already been dismissed on merits and hence, no case for reconsideration is made out.

Shri Manoj Soni, learned counsel, who has also appointed as Amicus Curiae to assist this court has submitted that earlier the standing order No.1/89 was in force which has already been dealt with by the Hon'ble Supreme Court in the case of **Union of India vs. Mohanlal and another** reported as **(2016) 3 SCC 379**. Thus, it is submitted that the aforesaid decision would govern the field, so far as it relates to seizure and sampling.

Heard the learned counsel for the parties and also perused the record.

Although it is true that the earlier bail applications of the applicant have already been dismissed on merits, however, the aspect of sampling has never been considered by this Court, which goes to the root of the matter, hence, the application is considered on merits. It is not in dispute that the samples of the contraband were taken only after the contents of four bags seized from the possession of the present applicant were mixed together. Thus, it cannot be ascertained if the Poppy Straw was kept in one or two

:4:

or more bags and even assuming that Poppy straw was kept in one bag, weighing 24 or 18 Kg, the mixing of all the bags together would also lead to the positive report of the narcotic drug

So far as the decision rendered in the case of **Union of India vs. Mohanlal & another (supra)** is concerned, on close perusal of the same reveals that it does not throw light on the method of drawing samples of the narcotic drug seized. In such circumstances, even presuming that one of such bags had contraband in it, it would come to either 24 or 18 kg of Poppy Straw, both of which are less than the commercial quantity of Poppy Straw which is 50 Kg. Thus, considering the period of incarceration as the applicant is lodged in jail since 16.05.2018, and the final conclusion of the trial is likely to take sufficiently long time, the application filed by under Section 439 of Cr.P.C. on behalf of the applicant is hereby allowed.

The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.1,00,000/-** (Rupees One Lac. only) with one solvent surety of the like amount to the satisfaction of the trial Court for his/her regular appearance before the trial Court during trial with a condition that he / she shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

:5:

It is also observed that after his release on bail, if the applicant is found in any criminal activities, the learned Judge of the trial court shall, after giving an opportunity of hearing to the applicant, be at liberty to cancel this bail order without further reference to this Court.

The Misc. Criminal case stands **allowed**.

Certified copy, as per rules.

(Subodh Abhyankar)
Judge

moni

