

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 7th OF AUGUST, 2023

MISC. CRIMINAL CASE No. 21094 of 2023

BETWEEN:-

**HOSHIYARSINGH S/O SOHANSINGH, AGED ABOUT 35
YEARS, OCCUPATION: AGRICULTURIST MANSA DIST.
MANSA (PUNJAB)**

.....APPLICANT

***(SHRI SANTOSH KUMAR MEENA, LEARNED COUNSEL FOR
THE APPLICANT.)***

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION MALHARGARH
DIST. MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANAND SONI, LEARNED A.A.G. FOR THE STATE.)

MISC. CRIMINAL CASE No. 2948 of 2023

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BETWEEN:-

**SARVANRAM S/O TULSIRAM, AGED ABOUT 40 YEARS,
OCCUPATION: AGRICULTURIST VILLAGE LADDAPATTI
P.S. RUKERAKALA DISTRICT BARNALA (PUNJAB)**

.....APPLICANT

***(SHRI SUBODH CHOUDHARY, LEARNED COUNSEL FOR THE
APPLICANT.)***

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION MALHARGANJ,
DISTRICT MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANAND SONI, LEARNED A.A.G. FOR THE STATE.)

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These bail application coming on for admission this day, the court passed the following:

ORDER

Heard with the aid of case diary.

These are first bail applications filed under Section 439 of Cr.P.C. for grant of bail to the applicants, relating to FIR/Crime No.275/2022 Date:-(Not mentioned) registered at P.S.-Malhargarh, District-Mandsaur (M.P.) for commission of offence punishable under Sections 8 /15 and 29 of the N.D.P.S. Act.

2. Prosecution story in brief is that on 23/10/2022, the applicants/accused persons were transporting 26 plastic sacks of poppy straw in which 9 packets of 25 Kg each, 7 packets of 18 kg each, 10 packets of powder of 10 kg each, a total of 451 Kg of poppy straw in container vehicle bearing registration no. PB-12-BB-7444, without having any licence or authority. The police had recovered the aforesaid contraband from the applicants/accused persons. During investigation it was found that applicant Sarvanram is registered owner of the seized vehicle. The co-accused Maasuk supplier of the contraband to the applicant and the contraband was to be supplied to the co-accused Nikka alias Gurupindar Singh.

3. Learned counsel for the applicant submits that, applicants are innocent and have falsely been implicated in the alleged offence. It is submitted that samples were not taken out from each bag and was not sent separately for chemical examination. It is also submitted that the contraband of all 26 packets were mixed together and after mixing the same, homogeneously, 2-2 samples of poppy straw and powder were taken out of it, which is not permissible and is in contravention of standing order no. 1/89. Therefore, it cannot be said that all the

bags seized from the present applicants contained poppy straw. It is also submitted that in identical situation *vide order dated 02/08/2022 in MCRC no. 30722/2022 (Jaivardhan V State Of M.P.); MCRC no. 35202/2022 order dated 05/08/2022 [Dinesh Kumar Meena V State of M.P.]; MCRC no. 10347/ 2023 order dated 21/03/2023 [Shamresh Singh V State of M.P.] and MCRC no. 11615/ 2023 order dated 17/03/2023 [Dinesh V State of M.P.]*, coordinate bench of this court has granted bail to the similar situated concerning accused persons.

4. The applicants are in jail since 20/07/2022. Chargesheet has been filed. The applicants have no criminal past. Trial will take considerable long time for its disposal. Under such circumstances, the applicants have prayed for grant of bail. Learned counsel for the applicants has also placed reliance on the case of *Noor Aga V State of Punjab And Anr. [(2008) 16 SCC 417] and Union Of India V Bal Mukund And Ors. [(2009) 12 SCC 161]*.

5. Per-contra Learned counsel for the non-applicant/ state has opposed the prayer and prays for its rejection by submitting that huge quantity of contraband has been recovered from the possession of the applicants and there is bar u/s 37 of the NDPS act. Hence, the applicants are not entitled for bail. He placed reliance in the *case of Abdul V State of M.P. [MCRC no. 49816/ 2022, order dated 12/12/2022]*.

I have heard learned counsels for the parties and perused the case diary.

6. Relevant portion of standing order no. 1/89 reads as under:-

“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 1 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/ containers may be carefully bunched in lots of 10 packages/ containers except in the case of Ganja and Hasheesh (Charas), where it may be bunched in lots of 40 such packages/ containers. For each such lot of package/ containers, one sample (in duplicate) may be drawn”

7. In the case of *Noor Aga (Supra)* the apex court has acquitted the appellant and held in paragraph 119 as under:-

“119. Our aforementioned findings may be summarized as follows :1. The provisions of Sections 35 and 54 are not ultra vires the Constitution of India.

2. However, procedural requirements laid down therein are required to be strictly complied with.

3. There are a large number of discrepancies in the treatment and disposal of the physical evidence. There are contradictions in the statements of official witnesses. Non-examination of independent witnesses and the nature of confession and the circumstances of the recording of such confession do not lead to the conclusion of the appellant's guilt.

4. Finding on the discrepancies although if individually examined may not be fatal to the case of the prosecution but if cumulative view of the scenario is taken, the prosecution's case must be held to be lacking in credibility.

5. The fact of recovery has not been proved beyond all reasonable doubt which is required to be established before the doctrine of reverse burden is applied. Recoveries have not been made as per the procedure established by law.

6. The investigation of the case was not fair.

We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly.”

8. In the case of *Bal Mukund And Ors. (Supra)* the apex court in paragraph 36 has held that “there is another aspect of the matter which cannot be also be lost sight of standing instruction 1/88, which had been issued under the act, lays down the procedure for taking samples. The high court has noticed

that PW 7 had taken samples of 25 gm each from all the 5 bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement in law.”

9. In the case of *Abdul (Supra)* the coordinate bench of this court has held as under:-

“In the case of Sumit Tomar vs. State of Punjab [2013 (1) SCC 395, Hon'ble the Apex Court has considered the point of mixing the contraband, but the Hon'ble Court has refused to accept such contention and observed as under:

"The next contention, according to the learned Senior counsel for the appellant, is that the prosecution has committed an irregularity by mixing up the contraband found in the bags and taken samples thereafter. We find no substance in the said argument. The present appellant was driving the car in which two bags of contraband were loaded. He further pointed out that in view of Section 15(c) of the NDPS Act which prescribes minimum sentence of 10 years and which may extend to 20 years where the contravention involves commercial quantity, the mixing of two bags is a grave irregularity which affects the interest of the appellant. We are unable to accept this contention".

In the case of Supdt., NCB Chennai, vs. R. Paulsamy, (2000) 9 SCC 459 and Union of India vs. Ram Sumujh and Another (1999) 9 SCC 429, It has been held that the procedural irregularity etc, if any can not be looked into at the time of grant of bail. This position has been reiterated by the Apex Court in Union of India vs. Md. Nawas Khan, 2021 (10) SCC 100 and held that when the issue is as to whether the procedure laid down under the NDPS act is complied or not, the same cannot be looked into at the time of grant of bail and can only be decided at the time of trial, as the same is question of fact.”

10. Having considered rival submissions of both the parties, perused the case diary also considering the aforesaid settled principle of law in granting of bail in such type of cases. This case is related with the huge quantity of contraband, hence, this court is not inclined to grant bail to the applicants. Accordingly, the bail petition is hereby **rejected**.

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