

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

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 8th OF JUNE, 2023

MISC. CRIMINAL CASE No. 23074 of 2023

BETWEEN:-

**GORELAL S/O BHANGDA RAWAT, AGED ABOUT 48
YEARS, OCCUPATION: LABOR AND AGRICULTURIST
R/O GRAM NAVAD KOTBEDE DISTT. KHARGONE
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ASHISH GUPTA – ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION CHAINPUR,
DISTRICT KHARGONE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH - GOVT. ADVOCATE)

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

ORDER

This is first application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail relating to FIR No. 94/2021 dated (not mentioned) registered at Police Station - Chainpur, Dist. Khargone (M.P.) for the offence under Sections 8/20 of NDPS Act. The earlier bail application as rejected on 06.09.2022.

2. As per the prosecution, it is alleged that 705 Ganja plants have been recovered from an agricultural field where the applicant and his wife were found to be present. The applicant fled away from the spot, however,

he has been arrested on 09/08/2022.

3. Counsel for the applicant submits that in view of the provisions of Section 2(iii)(b) of the NDPS Act, the seeds and the leaves when not accompanied by the tops are to be excluded. It is further submitted that the offence would fall under Section 20(a)(b) of the NDPS Act and there is no minimum sentence prescribed for the said offence, therefore, bar under Section 37 of the NDPS Act would not apply in the present case. The applicant is in jail since 09/08/2022 and there is no criminal record.

4. Counsel for the State opposes the prayer for grant of bail, however, fairly submits that there is no criminal record of the applicant.

5. After hearing learned counsel for the parties and taking into consideration that the seizure is of plants and the bar under Section 37 of NDPS Act would not apply and the applicant is in jail since 09/08/2022 and there is no criminal record, I am of the view that the applicant is entitled for grant of bail.

6. Therefore, without expressing any view on the merits of the case, the application is allowed. It is directed that the applicant shall be released from custody upon furnishing a personal bond of **Rs.1,00,000/- (Rupees One Lac Only)** with one surety of the like amount to the satisfaction of the Ld. Court below. He shall also abide by the conditions enumerated under section 437(3) of Cr.P.C.

7. The prison authorities are also requested to ensure compliance with the order passed by the Supreme Court IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS in SUO MOTU "W.P. (C) No.1/2020" and ensure that the applicant is examined by the jail doctor before her release. If the applicant shows symptoms of COVID-19, the doctor shall forthwith direct her to be produced before the appropriate hospital designated for the detection and treatment of COVID-19 patients. If the doctor is of the opinion that the applicant is

not affected with the virus, the jail authorities shall ensure her transportation from the jail till his place of residence.

8. It is further made clear that if it is found that the applicant is involved in any other case during the trial, this bail order shall stand cancelled automatically without reference to the Court and the Police will be at liberty to arrest the applicant.

9. A typed copy of this order is being forwarded to the Office of the Advocate General, on their email address, for intimation to the Police Station concerned. The office is requested to forward a copy of this order to the Ld. Court below

Cc as per rules.

(VIJAY KUMAR SHUKLA)
VACATION JUDGE