



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF AUGUST, 2024

MCRC No. 1395/2024

STATE OF M.P.

Versus

FARUKH S/O VALI MOHAMMAD AJMERI

Appearance:

(MS. MRADULA SEN, LEARNED COUNSEL FOR THE APPLICANT)

(SHRI HIMANSHU THAKUR, LEARNED COUNSEL FOR THE RESPONDENT)

ORDER

1. They are heard. Perused the case-diary/ record.
2. This is an application filed under Section 439 (2) of Cr.P.C. for cancellation of bail of the respondent- Farukh S/o Vali Mohammad, who has been granted bail by this Court in M.Cr.C. No.63727/2021 vide order dated 4.1.2022, registered at Crime No.142/2021 at police station Nai Abadi District Mandsaur under Section 8 read with Section 15 of the NDPS Act.
3. Counsel for the applicant has submitted that the **respondent Farukh** has been granted bail by this Court wherein he was found in possession of 12 Kilograms of poppy straw which was less than the commercial quantity (which is 50 Kilograms). However, after being released on bail, the applicant has again indulged in criminal



activities and a case has also been registered at Crime No.461/2023 at police station City Kotwali District Mandsaur under Sections 8/18, 22 of the NDPS Act on 25.7.2023. It is alleged that the respondent was found in possession of 900 grams of opium and 87 gram of MDM drug powder. It is also submitted that earlier also respondent was also involved in transportation of drug in Crime No.142/2021 under Section 8/15 of the NDPS Act.

4. Counsel for the applicant has also submitted that since the respondent Farukh has flouted the order passed by this Court in the aforementioned MCRC, and committed the same offence once again, the bail order of the respondent deserves to be recalled and cancelled.

5. Shri Himanshu Thakur, learned counsel appearing on behalf of the respondent/accused on the other hand has opposed the prayer, and it is submitted that the respondent has already been released on bail by the coordinate Bench of this Court in MCRC.No.55562/2023 vide order dated 10.1.2024, in connection with subsequent offence registered at Crime No.461/2023 at police station Kotwali District Mandsaur under Section 8/18, 22 and 29 of the NDPS Act on 25.7.2023. It is submitted that sample MDM drug seized from the applicant has been found to be not a psychotropic substance in report of the Chemical Laboratory, and the opium is also of non-commercial quantity.



6. Hence, it is submitted that the application for cancellation of bail is liable to be dismissed.

7. Counsel for the respondent has also relied upon the decision rendered by the coordinate Bench of this Court in MCRC.No.1136/2024 dated 7.3.2024 (State of M.P. Vs. Manoj) wherein it is held that only on the basis of registration of criminal cases, bail so granted to the applicant, cannot be cancelled and it is only when the applicant is convicted in any other crime, the bail granted, would be cancelled.

8. Having considered the rival submissions, and on perusal of the case diary, this Court is of the considered opinion that even if one of the drugs seized from the respondent is not found to be drug as per the FSL report, however, he has still been found in possession of opium, and in such circumstances, when he has not learnt any lessons from his past mistakes, regardless of the fact that opium was less than the commercial quantity it is apparent that the respondent has clearly violated the terms and conditions of the order passed by this Court in MCRC.No.63727/2021, and has committed the same offence once again, in such circumstances, a case for interference is clearly made out, and accordingly the application stands allowed. So far as the order passed by the coordinate bench in MCRC.No.1136/2024 dated 7.3.2024 (State of M.P. Vs. Manoj) is concerned, it can be said that it was passed in the facts and circumstances of the that case only, because even



s.437(3)(b) of Cr.P.C. inter alia provides that the person being released on bail shall not commit another offence as one of the conditions for grant of bail, and his conviction in any other offence has nothing to do with the condition of bail, as apparently, if he is convicted, he is likely to go to jail as a natural corollary.

9. Accordingly, the bail order passed by this Court in M.Cr.C.no. 63727/2021 dated 4.1.2022 is hereby recalled and cancelled.

10. **The respondent Farukh S/o Vali Mohammad Ajmeri is on bail and is directed to surrender before the trial Court within two weeks.**

11. With the aforesaid, **the M.Cr.C. stands allowed and disposed of.**

(SUBODH ABHYANKAR)
JUDGE

das