

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

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 15th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 1994 of 2024

BETWEEN:-

**PRAHLAD CHOUHAN S/O KANWARLAL CHOUHAN,
AGED ABOUT 38 YEARS, OCCUPATION: LABOUR
VILLAGE SUNTHOD TEHSIL MALHARGARH (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI ANIL OJHA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH P.S. NARCOTICS CELL INDORE
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI GAURAV RAWAT, DY. GOVERNMENT ADVOCATE)

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

ORDER

They are heard. Perused the case-diary.

This is the **SEVENTH** bail application filed by applicant under Section 439 of Criminal Procedure Code, 1973 as he is implicated in connection with Crime No.04/2019, registered at Police Station - Narcotic Cell, Indore (M.P.) for offence punishable under Section 8/15 of IPC, 1860. The applicant is in custody since 24.01.2019.

2. The first application was dismissed as withdrawn vide order dated 10.02.2020 passed in M.Cr.C. No.52504/2019, second application was

dismissed on merits vide order dated 07.01.2021 passed in M.Cr.C. No.45795/2020, third application was dismissed as withdrawn with liberty to revive the prayer after three weeks vide order dated 23.07.2021 passed in M.Cr.C. No.14791/2021, fourth application was dismissed on merits vide order dated 23.11.2021 passed in M.Cr.C. No. 46818/2021, fifth application was dismissed on merits vide order dated 24.03.2022 passed in M.Cr.C. No. 11877/2022, sixth application for temporary bail was allowed for a period of two months vide order dated 13.03.2023 passed in M.Cr.C. No. 7871/2023 and also an application under Section 482 of Cr.P.C. was also dismissed as not pressed vide order dated 15.12.2023 passed in M.Cr.C. No. 21643/2023 by Co-ordinate Bench of this Court.

3. As per prosecution story, 24/01/2019, Office of Narcotic Cell, Indore received secret information regarding illegal transportation of contraband. Acting upon the said information, office of Narcotic Cell intercepted Mahindra Tractor bearing registration no. MP-14-AD-0997 and recovered 1 Qt and 92 kg poppy-straw from the possession of present applicant. Accordingly, offence has been registered and applicant has been arrested.

4. Learned counsel for the applicant contended that applicant is innocent and has been falsely implicated in this offence. Investigation is over and charge-sheet has been filed. No further custodial investigation is required. There is no legal evidence available on record to connect the applicant with the aforementioned offence. He is in jail since 24/01/2019. He is a permanent resident of District- Mandsaur. Final conclusion of trial shall take sufficient long time. In the trial Court, charges have been framed on 11/10/2021, but still the trial has not been concluded. To bolster his submissions, learned counsel has placed reliance upon the orders dated 31.01.2018, 03.03.2017, 24.07.2017,

28.02.2017 and 19.06.2017 passed in M.Cr.C Nos. 2644/2018, 1055/2017, 2826/2017, 11691/2016 and 3631/2017 respectively and argued that the prosecution has failed to examine all witnesses since last two years.

5. Learned counsel for the applicant has further placed reliance upon the judgment passed by Hon'ble Apex Court in the case of ***Sudhakar Rao Vs. State of M.P.*** in SPL (Crl.) No. 359/2024, ***Lal Bahadur @ Naveen Chouhan*** in ***Special Leave to Appeal (Crl.) No. 2913/2022***, ***Nitish Adhikary @ Bapan Vs. State of West Bengal*** in ***Special Leave to Appeal (Crl.) No. 5769/2022*** and ***Tapas Mondal Vs. State of West Bengal*** in ***Special Leave to Appeal (Crl.) No. 8464/2023*** and also placed reliance upon the orders dated 23.06.2023, 21.06.2023, 21.06.2023, 23.06.2023 & 15.06.2023 passed in Cr.A. Nos. 8664/2022, 7297/2023, 7008/2023 & 1331/2020 & 7203/2023. Therefore, on the basis of the aforesaid cited orders, prayer for grant of bail may be considered on such terms and conditions, as this Court deems fit and proper.

6. Per-contra, learned counsel for the respondent / State opposes the bail application and prays for its rejection by submitting that the applicant's earlier bail application was rejected on merits. Further, he has also drawn attention towards the judgment passed by Full Bench of Hon'ble Apex Court in the case of ***Narcotics Control Bureau Vs. Mohit Aggarwal*** reported in ***2022 LiveLaw (SC) 613*** and submitted that only 7 witnesses are yet to be examined before the trial Court and trial Court is trying to conclude the trial but only on the basis custody period, the applicant cannot be released on bail.

7. In view of the aforesaid submissions, I have gone through the case diary.

8. So far as the case ***Sudhakar Rao*** (supra) is concerned, this case is

related to Sections 307, 302 and 120B of IPC whereas the present case is related to NDPS Act. In *Lal Bahadur @ Naveen Chouhan* (supra) and *Nitish Adhikary @ Bapan* (supra), the quantity of contraband has not been mentioned. That apart, in *Lal Bahadur @ Naveen Chouhan* (supra), out of 19 witness only 6 witnesses have been examined and in *Nitiash Adhikary @ Bapan* (supra) only one witness was examined whereas in the case at hand, as per status report of the learned trial Court, 7 witnesses have been examined and only 7 witnesses yet to be examined. Similarly, all the facts of *Tapas Mondal* (supra) are different to this case. So far as the other citations placed by learned counsel for the applicant, are concerned, they are also having different factual matrix. Most of them, are criminal appeals. It is well settled that every criminal case has its individual facts and circumstances and due to different facts of other cases, similar order cannot be passed. On this aspect, the law laid down by Full Bench of Hon'ble Apex Court in the case of *Narcotics Control Bureau* (surpa) has binding effect over this Court. The following excerpt is relevant to quote here :-

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. **The length of the period of his custody or the fact that the chargesheet has been filed and the trial has commenced are by**

themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

9. So far as the facts and circumstances of the present case are concerned, no material change in the circumstances has been depicted by the applicant except custody period.

10. Considering all the facts and circumstances of the case, arguments advanced by both the parties, nature and gravity of allegation as also taking note of the fact that total 1 Qt. and 92 kg poppy straw has been recovered from the possession of the present applicant, which is huge quantity as well as commercial quantity. Applicant's earlier bail applications were rejected on merits vide order dated 23/11/2021 and 24.03.2022 passed in M.Cr.C. Nos. 46818/2021 and 11877/222 by Co-ordinate Bench of this Court while considering all the facts and circumstances of the case. Therefore, since no material changes in the circumstances revealed before this Court, the present **Seventh** bail application is liable to be rejected.

11. Accordingly, M.Cr.C. is dismissed as being devoid of merit.

(PREM NARAYAN SINGH)
JUDGE