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MCRC-33156-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 12th OF SEPTEMBER, 2024MISC. CRIMINAL CASE No. 33156 of 2024*BHUPENDRA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Himanshu Thakur - Advocate for the applicant.

Shri Vishal Singh Panwar - G.A./P.L. for respondent/State.

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ORDER

1. They are heard. Perused the case-diary.
2. This is the applicant's first bail application filed under Section 439 of Criminal Procedure Code, 1973, as he/she is implicated in connection with Crime No.728/2022 registered at Police Station Neemuch Kant/Cantt., District Neemuch (MP) for offence punishable under Sections 8/15 29, 32(B)(A) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and Sections 25 & 27 of Arms Act, 1959. The applicant is in custody since 26.12.2022.
3. The allegation against the applicant is that he was also involved in the aforesaid case wherein the applicant was apprehended along with 4 quintal of poppy straw, which was being transported in a *Fortuner* vehicle bearing registration No.GJ-26-N-2968 and had also fired gun shot at the police party at the time of incident.



4. Counsel for the applicant has submitted that the applicant has been falsely implicated in the case and is lodged in jail since 26.12.2022. It is also submitted that out of 14 accused persons, 8 accused persons have already been granted bail by this Court and the conclusion of trial is likely to take sufficient long time as till date not a single witness has been examined. Thus, it is prayed that the application be allowed.

5. Counsel for the applicant has also submitted that there is no compliance of Section 52-A of the N.D.P.S. Act and has also relied upon other decisions rendered by the Supreme Court in the cases of **Altaf Molla @ Altab Molla @ Altaf Mollah & Anr. Vs. The State of West Bengal** passed in **Petition(s) for Special Leave to Appeal (Crl.) No.3708 of 2024 dated 30.08.2024**; and **Babor Ali Mondal Vs. The State of West Begnal** passed in **Criminal Appeal No.3349 of 2024 (Arising out of SLP (Crl.) No.7383 of 2024) dated 13.08.2024** to submit that looking to the period of incarceration, the applicant deserves to be released on bail as in the case of **Altaf Molla (supra)**, the applicant had completed 20 months of incarceration, whereas in the case of **Babor Ali Mondal (supra)**, he had completed 1 year and five months of incarceration.

6. Counsel for the State, on the other hand, has opposed the prayer and it is submitted that no case for grant of bail is made out looking to the serious allegations levelled against the applicant, who had also fired gun shot at the police party at the time of the incident and a gun and live cartridges have also been seized from the possession of the applicant.

7. Heard. Having considered the rival submissions, perusal of the



case-diary and considering the serious allegations levelled against the applicant, this Court does not find it to be a fit case for grant of bail, otherwise also looking to the mandate of Section 37 of the N.D.P.S. Act, this Court is not able to form any opinion that the applicant has not committed any offence under the N.D.P.S. Act or that he would not commit another offence if released on bail.

8. Accordingly, the application being devoid of merits is hereby **dismissed**.

9. So far as the decisions cited by the counsel for the applicant are concerned, the same are distinguishable and are of no avail to the applicant. Otherwise also this Court has already taken a view in the case of **Baburam Vs. Union of India** passed in M.Cr.C. No.37588 of 2024 dated 13.09.2024 after referring to the various decisions of the Supreme Court that the bail in cases involving Narcotic drugs cannot be allowed, unless the mandate of Section 37 of the N.D.P.S. Act is complied with and mere incarceration of a person, would not entitle him to be released on bail.

10. M.Cr.C. stands ***dismissed***.

(SUBODH ABHYANKAR)
JUDGE