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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

**ON THE 25<sup>th</sup> OF JULY, 2023**

**MISC. CRIMINAL CASE No. 30781 of 2023**

**BETWEEN:-**

**MAHENDRA YADAV S/O LAXMAN YADAV, AGED ABOUT  
28 YEARS, OCCUPATION: FARMER 41 SIPARI BAJAR  
NEW GRAM JHANSI KHACH POLICE STATION JHANSI  
(UTTAR PRADESH)**

**.....APPLICANT**

***(BY SHRI SANDEEP KUMAR JAIN - ADVOCATE)***

**AND**

**BHARAT SANGH GRAH MANTRALAY SWAPAK  
NIYANTRAN BUREAU (NCB) THROUGH SHRI RAM  
PANDEY KANISHTH ASOOCHNA ADHIKARI ZONAL  
UNIT INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI SANDEEP KUMAR SHUKLA - ADVOCATE)***

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

**ORDER**

This is second application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail.

2. N.C.B. Indore has registered FIR at Crime No.10/2021 for offence punishable under Sections 8/20(b)(ii)(c), 25, 27-A read with Section 29 of NDPS Act, 1985 and applicant was arrested on 29.09.2021

3. Counsel appearing for applicant submitted that there are three accused in the case namely Suresh Gupta, Rambabu Yadav Gemmeli Basu. On 29.09.2021 Police Station-N.C.B. Regional Unit Indore received information

regarding transportation of Narcotic substance. As per information received, respondents stopped the truck bearing no.MP-09-HF-6395 at Toll Plaza Aloniya District Seoni and two accused persons were found in it namely Mahendra Yadav & Sohel Daudkha Pathan. On checking aforesaid truck, in secret pocket of diesel tank, 152.665 kg. *ganja* was seized. Earlier application filed by applicant bearing M.Cr.C No.45956/2022 was dismissed as withdrawn on 29.11.2022. It is submitted that co-accused namely Rohan Singh Thakur was enlarged on bail in M.Cr.C.No.41873/2022 vide order dated 09.11.2022. Said applicant was granted bail for non-compliance of provision of Section 42(1) of NDPS Act, which is mandatory in nature. It is submitted that applicant on the grounds of parity may also be enlarged on bail.

4. Shri Sanjay Kumar Shukla - Advocate appearing for Narcotic Control Bureau opposed the bail application and submitted that case of the applicant is distinguishable from that of co-accused person. Co-accused Rohan Singh Thakur was not occupying the truck and was not in conscious possession of contraband. Applicants were occupants of the truck and case of the applicants is not on parity. Counsel appearing for respondent also relied on judgment passed by Apex Court in the case of **Union of India through Narcotics Control Bureau Vs. Mohd. Nawaz Khan** (*Criminal Appeal No.1043/2021 decided on 22nd September, 2021*). In said case, reliance was placed on judgment passed in the case of **Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 539**. It is submitted that question of compliance of Section 42 of NDPS Act is to be considered during course of trial and not before that and, therefore, prayer is made for dismissal of bail application.

5. Heard learned counsel for parties.

6. Co-accused in the case namely Suresh Gupta has filed an application for anticipatory bail bearing M.Cr.C.No.40463/2022. His application for grant of anticipatory bail was dismissed on 20.09.2022. Co-accused - Rohan Singh Thakur was granted bail and after grant of bail on 09.11.2022, application of applicant was considered on 29.11.2022 and the same was dismissed as withdrawn. Applicant has raised the ground that there is non-compliance of Section 42 of the NDPS Act. Supreme Court in the case of **Union of India Vs. Mohd. Nawaz Khan (supra)** has specifically laid down that question of compliance of Section 42 of the Act is to be considered at the time of trial, if information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance is in possession of some persons and copy of same be sent to immediate superior officer. Proviso is also added to Section 42 of the Act that if information cannot be sent then reasons for not sending the information may also be recorded by officer receiving information.

7. On perusal of case diary, it is found that information has been sent to Senior Officer on 28.09.2021 at 1800 hours and information was also taken down in writing, therefore, *prima-facie* there is compliance of section 42 of NDPS Act. After granting bail to co-accused persons namely Rohan Singh Thakur, case of the applicant was considered and same was dismissed because counsel appearing for applicant withdrawn the application. Case of co-accused - Rohan Singh Thakur is on different footing but so far as applicant is concerned, he was found in occupation of truck, when checking of truck was conducted by respondent-department.

8. Considering aforesaid facts and circumstances of the case, bail application filed by applicant is **dismissed**.

**(VISHAL DHAGAT)  
JUDGE**

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