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MCRC-36737-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 13th OF OCTOBER, 2025

MISC. CRIMINAL CASE No. 36737 of 2025

DEVENDRA TIWARI

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Sandeep Kumar Jain - Advocate for the petitioner applicant.

Shri C. K. Mishra - Government Advocate for the State.
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ORDER

This is the second application filed by the applicant under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail relating to FIR/Crime No.45/2025 registered at Police Station-Jatara, District-Tikamgarh (M.P.) for the offence punishable under Sections 8/18 and 27A of NDPS Act. The applicant is in jail since 04.03.2025. Earlier bail application was dismissed as withdrawn vide order dated 04.08.2025 passed in M.Cr.C. no.13892/2025.

2. Learned counsel for the applicant has submitted that as per the prosecution case, on 04.03.2025, Asharam was cultivating the opium poppy which was uprooted and weighted 4100 kg. On the memorandum of Asharam, the applicant Devendra Tiwari has been arrested but the police has not submitted the charge sheet from 05.03.2025 to 17.07.2025 on completion of 90 days. They have filed the bail application under Section 187 of B.N.S.S. but that was dismissed by the trial Court holding that Section 27A of NDPS Act has been enhanced in the case whereas in FIR and arrest memo, it has not been mentioned that the offence under Section 27A of NDPS Act has been registered, hence, following the



judgment of **Kalla Mallah and others v. State of M.P.** passed in Criminal Revision 1933/2021 dated 14.12.2022 and **Raja Bhaiya v. State of M.P.** passed in Criminal Revision No.1813/2020, the applicant is entitled for bail and also argued that the trial Court has committed illegality.

3. Learned counsel for the State has submitted that Investigating Officer along with Halka Patwari of the area made a raid and found that the cultivation of opium was being done in survey no.2114 and 2137/2/1/1 by Asharam Kushwaha and the applicant Devendra Tiwari 4,100 saplings of opium poppy were recovered from the land. The cultivation was being done in 0.688 hectare of the land. The co-accused Asharam Kushwaha in his statement has clearly admitted that the cultivation of opium was done in the agricultural land survey no.2114 and survey no.2137/2/1/1 and the cultivation was done with the consent and advice of Ranu Tiwari and Devendra Tiwari. Ranu Tiwari has asked him to cultivate the opium and he will see the marketing. After Diwali, he has provided high quality of seeds of opium and he has also stated that Ranu Tiwari has also given Rs.2,000/- for fertilizers and Ranu Tiwari and his brother Devendra Tiwari were jointly looking after the crops on sharing of the crops was 50-50 basis. These statements were recorded on 06.03.2025.

4. The Investigating Officer has also pointed out that illegal traffic in relation to Narcotic Drugs and Psychotropic Substances is defined in sub clauses (i) and (ii) of clauses (viii)(v) of Section 2 of NDPS Act in which cultivating the opium poppy also come in that purview and as per Section 27A of NDPS Act, the person indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) of Section 2 of NDPS is punishable which may extend to twenty years and shall also be liable to fine which may extend to



two lakh rupees. On that basis, learned counsel has submitted that as per Section 36A(4) of NDPS Act, in respect of Section 27A of NDPS Act, the remand period may extend to 180 days. On that basis, learned counsel for the State has submitted that no case of bail is made out.

5. Heard learned counsel for the parties and perused the case diary.

6. The trial court has dismissed the bail application on the ground that the offence under Section 27A of NDPS Act has been enhanced though it is clearly not written but from the perusal of the case diary and the statement of co-accused Asharam, the fact was revealed that the applicant and his brother provided seeds of opium poppy, also provided money of Rs.2,000/- for fertilizers, assured the co-accused to sell the product and the area of cultivation and the application of Sections 8/18 and 27A of NDPS Act, this Court is not inclined to enlarge the applicant on bail. Thus, the second bail application of the applicant is **dismissed**.

7. The applicant is also entitled for benefit of Section 167(2) of Cr.P.C./Section 187 of B.N.S.S.

(DEVNARAYAN MISHRA)
JUDGE

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