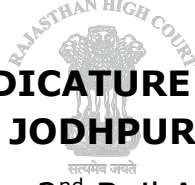


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**



S.B. Criminal Miscellaneous 2<sup>nd</sup> Bail Application No. 11651/2024

Satya Narayan S/o Bapu Lal Gurjar, Aged About 31 Years, R/o  
Village Pipaliya Khurd, P.s. Kukdeshwar, Dist. Neemuch, State  
Madhya Pradesh (At Present Lodged In Dist. Jail, Chittorgarh)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 15291/2023

Ram Narain S/o Shri Onkar Lal Dangi, Aged About 45 Years, R/o  
Nalwa, Kukdeshwar P.s.,dist. Neemach (Mp) (Confined In Dist.  
Jail, Chittorgarh).

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

S.B. Criminal Miscellaneous Bail Application No. 2910/2024

Prabhulal S/o Motilal Dangi, Aged About 39 Years, R/o Pipaliya  
Khurd, Ps Kukdeshwar, Dist Neemuch, Mp (Lodged In Dist Jail  
Tonk)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

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For Petitioner(s)	:	Mr. Shekhar Mewara Mr. B Ray Bishnoi Mr. Navneet Ponia for Abhimanyu Singh Ranawat
For Respondent(s)	:	Mr. Narendra Singh Chandawat, PP Mr. Shrawan Singh, PP

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**HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

**Order**

**Reportable**

**26/09/2024**

1. The Petitioners are arrested and detained in F.I.R No.207/2023 registered at Police station Kotwali Nimbahera, District Chittorgarh pertaining to offence punishable under sections 8/18 of the Narcotic Drugs and Psychotropic Substances Act (For short "the Act") and by these petitions, they seek restoration of their liberty on bail-bond.
2. Post recording of statement of investigating officer, present is second bail petition on behalf of petitioner Satya Narayan, whereas first petition from other petitioners.
3. Briefly narrated, facts of case of prosecution is that on 29.04.2023, during patrolling and a blockade, Ashwini Kumar Sub-Inspector and acting SHO of Police Station Kotwali Nimbahera intercepted a vehicle No.MP-44-CB-1892. Upon questioning, three individuals namely Prabhulal, Satya Narayan and Ram Narayan were found sitting in the vehicle. The search of vehicle led to the recovery of 3.150 kgs of contraband of *opium*. After filing of the charge sheet, statements of recovery officer and Investigating Officer has already been recorded during the trial.

4. I have appreciated the submissions advanced by the learned defence counsel and learned Public Prosecutor and have carefully perused the material available on record.

5. Learned counsels appearing for the petitioners have strongly contended that provisions of Section 50 of the NDPS Act were not followed during search and seizure proceedings and search was conducted without informing the petitioners of their rights, which constitutes violation of mandatory procedural safeguard. Non-compliance of Section 50 of the NDPS Act undermines the probity of search and seizure which renders it illegal. It is further contended that search and seizure was conducted by an police officer, who was not authorized under NDPS. According to him, only SHO of Police Station has legal authority to carry out these procedures. The search conducted by second officer of the police station is a procedural illegality which also renders the search illegal, as second officer Ashwini Kumar was not having legal and valid charge of post of SHO. On the strength of above arguments, they prayed that petitioners have availed themselves a strong prima facie case to question the case of prosecution making them entitle for bail.

6. Learned Public Prosecutor for the State has strongly objected the different submissions made by learned counsel for the applicants and submitted that 3.150 Kgs. of contraband *opium* recovered from the applicants falls within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is

attracted. Therefore, petitioners do not deserve to be released on bail.

7. I have given my anxious consideration to the rival submissions with reference to material placed before me.

8. It is seen that, during the trial, statements of Seizure Officer Ashwini Kumar (PW-1) and Investigating Officer Virendra Singh (PW-2) have already been record.

9. On perusal of record and upon consideration of the submissions, it would be clear that during search and seizure proceedings, notices under section 50 of the Act were issued by the seizure officer to the petitioners which reads as under:-

"आप द्वारा कार को नाकाबंदी स्थल पर नहीं रोक कार को भगा ले जाने का प्रयास किया जिस पर मन् ईन्चार्ज थाना मय जाप्ता द्वारा बेरियर लगा कर कार को रोका तो आप व आपके साथी सत्यनारायण, रामनारायण ने कार की फाटके खोल कर भागने का प्रयास किया जिस पर मन् ईन्चार्ज थाना मय जाप्ता द्वारा घेरा देकर आपको व आपके साथी सत्यनारायण, रामनारायण, को बामुश्किल रोका जाकर यथास्थिति में बैठे रहने की हिदायत की गई। आप नाकाबंदी के दौरान अल्दो कार को चेक करने हेतु पुलिस जाप्ता द्वारा रूकवाने पर कार को नहीं रोक कर भगाने का प्रयास किया एवम कार को रोकते ही कार की फाटक खोल कर भागने का प्रयास किया ऐसी स्थिति में आपके पास एव आपके कब्जे शुदा कार नम्बर एमपी 44 सी बी 1892 में अवैधानिक वस्तु होने की संभावना होने से आपकी व आपके कब्जे शुदा अल्दो कार नम्बर एमपी 44 सी बी 1892 की तलाशी ली जानी है। इस सम्बन्ध में आप अपना लिखित में जवाब पेश करें।"

10. The contents of above very important notice issued during search, make it clear that prima-facie there is non-compliance of provisions of section 50 of NDPS Act, since notices under section 50 of the Act issued to the petitioners do not mention any of

option or about the rights of petitioners. It only mentions about necessity which proves that seizure officer Ashwini Kumar (PW-1) has not complied with mandatory requirements of section 50 of NDPS Act as no option for search, containing rights of petitioners, was given to the petitioners. It prima facie renders search and seizure prima-facie questionable.

11. When such is the importance of a right given to an accused in custody, the right by way of safeguard conferred under Section 50 of the Act is more important and valuable. Therefore, it is to be taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in presence of a Gazetted Officer or a Magistrate. Therefore, provisions of Section 50 are mandatory. As per the said provision, offer is to be made that he will be searched in the presence of a Gazetted Officer or a Magistrate. The offer should contain mention of both offer and right to be discharged.

12. It is not disputed that words in sub-para 1 of section 50 "if such persons so require" have been interpreted by the Supreme Court as to mean that the police officer has to make an offer to the person to be searched. In view of the stringent provisions of the N.D.P.S. act, the officer is intended to make the person concerned aware of his rights under statute. When the requirement under the statute is to make the person concerned aware of his rights, it follows that he has to be informed of all his rights and all the options open to him under the law. The

interpretation which the learned counsel for the respondent wants to put, does not appear to be correct. The right is so important that a person should know all the options available under the law, so that he can exercise any of options which may appear to be best to him in the circumstances.

13. A particular person may like to be searched in presence of a Gazetted Officer, while the other may like to be searched in the presence of a Magistrate or vice versa. Therefore, I am of the view that offer to search in terms of section 50 NDPS Act must contain both the options i.e. to be searched in the presence of a Gazetted Officer or a Magistrate. The main purpose behind the requirement of making the offer to the person to be searched, is to make the person aware of his rights under the law, there is no scope for the argument advanced on behalf of the State. Therefore, no offer as required under section 50 of the NDPS Act has been given to the petitioners in the present case.

14. Further, it is pertinent to record that cross-examination was conducted from Seizure Officer (PW-1) Ashwini Kumar, wherein it was admitted by him that on the day of recovery, Phool Chand was posted as regular SHO. It was further admitted by him that there was no document to suggest that he had formally taken charge as a SHO of the concerned police station.

15. Upon perusal of charge-sheet, particularly, the list of witnesses, it is found that regular SHO, who allegedly handed over charge of the police station is not cited in the list of witnesses. No

authorisation in writing, empowering the Sub Inspector Ashwini Kumar, is available on the record.

16. Under the Narcotic Drugs and Psychotropic Substance Act, the legal principle regarding search and seizure action is particularly stringent due to severity of the penalties and importance of safeguarding rights of individuals. When a second officer claims to have carried out a search or seizure under the NDPS Act on the authority as a SHO, it is not enough for him to simply depose this verbally. The NDPS Act requires strict adherence to procedural safeguards, including documentary proof that second officer was legitimately acting as SHO at the relevant time. The principle touches upon legal validity and authority of search or seizure by a competent law enforcement personnel.

17. The rationale for this requirement is grounded in the law's intent to prevent abuse of police powers and to ensure accountability in search and seizure actions, especially given the serious nature of NDPS cases.

18. Under Section 41 and 42 of the NDPS Act, certain powers are specifically conferred on SHO only. For the second officer's actions to be considered lawful under the NDPS Act, it is necessary to show with documentary evidence that he was given the charge of the SHO's post. Falling this, any search or seizure carried out by the second officer is likely to be termed as unauthorized and beyond the scope of his powers which prima facie vitiate the search and seizure. Therefore, seizure officer Ashwini Kumar

(PW-1) must have produced written and valid documentation that shows he acted having authority of the SHO at the time of conducting the search and seizure, in which he has failed.

19. Therefore, Proceeding of search and seizure conducted by the Sub Inspector, Ashwini Kumar (PW-1) in this case is prima-facie unauthorised and without jurisdiction. Ashwini Kumar (PW-1) was not posted as SHO of Police Station Kotwali, Nimbahera and thus, he was not authorized to act in relation to the contraband, at a place falling within the territorial jurisdiction of said Police Station. Thus, the argument raised by the learned counsel for the petitioner regarding the search and seizure proceedings having been conducted by a person, who was not authorised to do so, carries weight in light of the mandatory provisions of Sections 41 & 42 of the NDPS Act. Therefore, this Court is amply satisfied that conditions of Section 37 of NDPS Act are duly satisfied so as to entitle the accused to be released on bail in this case. For drawing this conclusion, this Court aptly guided by the following observations made by Hon'ble the Apex Court in the case of **Roy V. D. Vs. State of Kerala reported in AIR 2001 SC 137:-**

*"16. Now, it is plain that no officer other than an empowered officer can resort to [Section 41\(2\)](#) or exercise powers under [Section 42\(1\)](#) of the NDPS Act or make a complaint under clause (d) of sub-section (1) of [Section 36A](#) of the NDPS Act. It follows that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not*



*being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.”*

20. Having considered the material available on record; the arguments advanced by counsel for the applicants particularly the facts narrated above and the fact that applicants are in custody since 29.04.2023. Bail rejection order goes to show that applicants are not involved in any other case under the N.D.P.S. Act; that trial is likely to take its own considerable time and taking note of all these aspects I do not intend to go into the merits of the matter but of the considered view that applicants have available to themselves substantial grounds so as to question the prosecution case and no useful purpose would be served by keeping the applicants in detention for an indefinite period therefore, I am inclined to grant indulgence of bail to the petitioners at this stage.

21. Consequently, the present bail applications are allowed and it is directed that the accused-petitioners **1.Satya Narayan S/o Babu Lal Gurjar, 2.Ram Narain S/o Shri Onkar Lal Dangi and 3.Prabhulal S/o Motilal Dangi**, arrested in connection with the F.I.R. No.207/2023 registered at Police station Kotwali Nimbahera District Chittorgarh shall be released on bail provided they furnish a personal bond and two surety bonds of sufficient

amount to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so. This order is subject to the condition that accused, within 7 days of their release, and sureties on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as copy of front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C in future.

**(RAJENDRA PRAKASH SONI),J**

Anshul/-