



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

S.B. Criminal Misc. 2nd Bail Application No. 4298/2024

Balveer @ Bira S/o Mangat Singh, aged about 35 years, resident of Muthiyawala, Police Station- Pattimod, District Tarantaaran, Punjab.

(Presently lodged at Jail Sri Karanpur)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent

For Petitioner(s) : Mr. R.S. Bhati.
Mr. Ishwar Singh.
For Respondent(s) : Mr. Arun Kumar, PP.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

07/08/2024

1. The applicant is under arrest in connection with crime registered pursuant to F.I.R. Number 145/2022 of Police Station Sri Karanpur, District Sriganganagar, in respect of offence punishable under Section 8/21 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 420, 465, 468, 471 and 379 of the Indian Penal Code. He has approached this Court by way of this application for bail under Section 439 Cr.P.C.

2. Earlier, applicant made an endeavor for seeking bail by way of filing first bail application which was disposed of without considering the merits of the case since it was not pressed with liberty to file fresh after recording of statement of seizure officer



of BSF, G. Gopinath Ganeshan. Yet prior to recording of statement of said officer, this second bail application has been moved.

3. Before I proceed to examine the rival contentions in connection with the questions of bail it would be appropriate to briefly state the facts of the present case which are that on 27.07.2022, G. Gopinath Ganeshan, Inspector of BSF, Border outpost at Kohli appeared at Police Station Srikarapur and submitted a written report along with five packets. According to the report, in the mid-night of 26 and 27 July, 2022, the 10th battalion of Border Security Force received an information suggesting possible suspect movement from Pakistan in the international border area. Consequently, a team was formed and an operation was carried out for vigilance. In the mid-night, some suspicious movement was seen under the cover of wild plants growing there and team heard sound of something being dropped/ thrown. While searching the area around the border, five packets were recovered near floodlight number 584, which were suspected to contain some suspicious object. Meanwhile, two Indian nationals were seen approaching the international border in a Breza car bearing registration number PB-65-AB-5522, but upon seeing the BSF troops, they immediately turned their car around and fled. The packets were found to weigh 4.730 kgs. When the police opened the packet and checked, it was found to contain heroin which was recovered as per law and investigation was started after registering a report. Later, it was found that two persons, who were caught by the Hindumalkot Police for causing





an accident along with the said Brezza car, had come there to take delivery of that consignment but could not succeed.

4. To begin at the beginning learned counsel representing applicant has fervently argued that BSF officer lodged the report of incident to the Police with an unexplained delay. After charge-sheet was presented in the case, statements of two formal witnesses have been recorded but the prosecution has not been able to produce the remaining material witnesses for a long time, causing delays in the trial. The accused has been in custody since 27.07.2022. There is no independent witness to the recovery and the Call Detail Record (CDR) of the petitioner's mobile phone has not been obtained. The accused was caught 70-80 km away from the place of recovery and contraband was not recovered from the physical possession of petitioner. There have been many legal deficiencies in recovery proceedings, making the prosecution's case unsustainable. Concluding submissions, he asserted that applicant is entitled to be enlarged on bail. Learned counsel fortified the above submissions by placing reliance on the following judgments: -

- 1 Lalita Kumari Vs. Government of U.P.
reported in (2014) 2 SCC 1
- 2 Noor Aga Vs. State of Punjab
reported in (2008) 16 SCC 417
- 3 Kashif Vs. NCB Delhi
(Bail Application No. 253/2023, decided on 18.05.2023)
- 4 Mohd. Khalid Vs. State of Telangana
reported in (2024) 5 SCC 393
- 5 Union of India Vs. K.A. Najeeb
reported in (2021) 3 SCC 713



5. On the other hand, learned Public Prosecutor while objecting the different submissions made by learned counsel for the applicant, would strongly submit that 04.730 Kgs. of contraband *heroin* recovered in the matter falls within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is attracted. There is overwhelming evidence adduced on record suggestive of the fact that bail petitioner indulges in the illegal international trade of narcotics therefore, petitioner does not deserve any sympathy. He thus, craves rejection of the applicant's bail application.

6. I have considered the rival submissions of learned counsel for the applicant as well as learned public prosecutor and perused the record.

7. Having heard and considered the submissions advanced by the learned counsel for the applicant and the learned Public Prosecutor and after going through the material and the evidence available on record, I am of the opinion that there is ample material on the record so as to connect the applicant with the allegation of recovery of 04.730 Kgs. of contraband *heroin*. On perusal of record, it is *prima facie* revealed that issues sought to be argued by the petitioner regarding alleged non-compliance of various provisions of NDPS Act and Cr.P.C. cannot be countenanced at this stage in such a case of international smuggling of contraband drug. The situation qua all the arguments raised by learned counsel for the petitioner, can become clear only from the statements of seizure officer and



investigating officer to be recorded during the trial. Therefore, it is expedient that statements of both of these witnesses be recorded during the trial. where provisions of Section 37 of the Act are attracted. *Prima facie*, there could be no legitimate reason for the petitioner's presence at the international border at mid-night, exactly at the time of arrival of consignment from Pakistan. Huge quantity of contraband Narcotic substance have been recovered and the petitioner is already facing trial in another matter under the NDPS Act.

8. This Court is of the opinion that international drug trafficking is a global menace that inflicts incalculable harm on individuals, communities and nations. It is a multifaceted problem. International drug trafficking stands as one of the most pervasive and destructive criminal enterprises in the world today. This illicit trade fuels violence and destabilizes governments. The enormous profits generated by the drug trade undermines the rule of law as criminal organizations wield power and influence rivaling that of legitimate authorities.

9. As a consequence of the above discussion, this Court is of the firm opinion that as the quantity of the psychotropic drug recovered from the petitioner is well above the commercial quantity prescribed in the Schedule, the restrictions contained in Section 37 of the N.D.P.S. act clearly operate against him and hence, he does not deserve to be released on bail at this stage. The facts of the case cited are different from the facts of case on hand thus, no benefit can be dug out in favour of petitioner.



10. In this view of the matter, I am not inclined to enlarge the applicant **Balveer @ Bira** on bail. Thus, the application for bail under Section 439 of the Criminal Procedure Code is dismissed as being devoid of merit.

11. However, keeping in view the custody of the petitioner, the Trial Court is directed to make all efforts to expedite the trial and send a progress status report after 6 months. Anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present application only.

12. Copy of the order be e-mailed to the Trial Court concerned.

(RAJENDRA PRAKASH SONI),J

Mohan/-