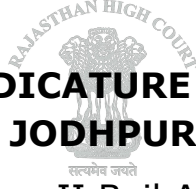




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**



S.B. Criminal Miscellaneous II Bail Application No. 9625/2023

Amjad Khan @ Akram @ Ajju S/o Shri Nazar Hussain, Aged About 28 Years, R/o Gudiya, Tibbi Police Station, District Hanumangarh, Present R/o Narendra Enclave, Ratanpura Sangaria Police Station, District Hanumangarh. (Lodged In Central Jail, Hanumangarh)

-----Petitioner

Versus

State of Rajasthan, through PP

-----Respondent

For Petitioner(s) : Mr. Bhagirath Ray Bishnoi  
For Respondent(s) : Mr. Gaurav Singh, PP

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

**27/05/2024**

1. The applicant is arrested and detained in Crime No.575/2022 registered at Police station Sangaria, District Hanumangarh pertaining to offence punishable under Sections 8/21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act (For short "the Act") and by this petition, seeks restoration of his liberty on appropriate bail-bond.

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

3. I have considered the rival submissions made by learned counsel for the applicant as well as learned public prosecutor and perused the record.



4. Learned Public Prosecutor for the State has strongly objected the different submissions made by learned counsel for the applicant and submitted that 510 Gms. of contraband heroin recovered from the applicant falls within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is attracted. He thus, craves rejection of the applicant's bail application.

5. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and have perused the record carefully.

6. On perusal of the record and upon consideration of the submissions, it would be clear that during the trial, the Investigating Officer Lal Bahadur Chandra, in his deposition has admitted that the samples of contraband taken by the seizure officer at the crime scene were not taken in the presence of a Magistrate. He also confirmed that till he received the investigation, the inventory proceeding was not conducted by the seizure officer nor such papers were included in the case file and he also did not conduct the inventory proceedings either. It is also accepted that the regular SHO of the police station was not the seizure officer; the seizure officer was the acting station house officer. However, no record or document has been produced to show that he officially took over the charge of the police station from the regular SHO in black and white. Additionally, there is no mention in the seizure memo indicating that he assumed the charge of the regular SHO before taking the action of seizure.



7. On perusal of the record, it would be also clear that admittedly mandatory provision of Section 52A of the Act has also not been followed as seizure officer did not get the proceedings under section 52A conducted in this case before a Magistrate or Gazetted Officer. Hon'ble the Apex Court in the case of **Mangi Lal vs. The State of Madhya Pradesh (Criminal Appeal no. 1651 of 2023 decided on 12.07.2023)**, it has been propounded that:-

“Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn.”

8. In **Mohammed Khalid Vs. The State of Telangana criminal appeal no. 1610 of 2023 (SC) Decided on 01.03.2024** Hon'ble the Apex Court has ruled that:-



22. Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the seizure Officer for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report is nothing but a waste paper and cannot be read in evidence.

9. In my considered opinion, the submissions made by learned counsel for the applicant cannot be completely overlooked. Having regard to the facts and circumstances of the case and having considered deposition in respect of section 52A of the act and other arguments addressed by counsel for the applicant, as noted above from the challan papers and evidence produced, it prima facie did not show the compliance of section 52A of the Act and seizure by competent and authorized officer, in its true spirit. In such a situation, it assumes importance that in absence of proper explanation from the prosecution, it prima facie significantly undermines the case of the prosecution and thus, the entire search and seizure proceedings are prima facie vitiated.

10. Having considered the material available on record; the arguments advanced by counsel for the applicant particularly the facts narrated above and the fact that applicant is in custody since 01.10.2022; that bail rejection order goes to show that applicant is 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 intent to go into the merits of the matter but of the considered view that the rigor of Section 37 of the



N.D.P.S. act is duly satisfied, forasmuch this court feels that the applicant has available to him substantial grounds so as to question the prosecution case and no useful purpose would be served by keeping the applicant in detention for an indefinite period therefore, I am inclined to grant indulgence of bail to the applicant at this stage.

11. Consequently, the present second bail application is allowed and it is directed that the accused-applicant **Amjad Khan @ Akram @ Ajju S/o Shri Nazar Hussain**, arrested in connection with the F.I.R. No.575/2022, registered at Police Station Sangaria, District Hanumangarh shall be released on bail provided he furnishes 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 his 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 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**

3-Suraj/-