

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**S.B. Criminal Miscellaneous 2<sup>nd</sup> Bail Application No. 10205/2024

Mukesh @ Montu S/o Satyanarayan, Aged About 34 Years, R/o House No. 91, Tejeshwar Nagar Pal Balaji Road, Ps Chopasani Housing Board, Ps Chopasani Housing Board, Jodhpur. (Lodged In Central Jail Jodhpur.)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. N.K. Gurjar  
For Respondent(s) : Mr. Abhishek Purohit, AGA

**HON'BLE MR. JUSTICE FARJAND ALI****Order****12/08/2024**

1. The jurisdiction of this court has been invoked by way of filing the instant second bail application under Section 439 CrPC at the instance of accused-petitioner. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	39/2024
2.	Concerned Police Station	Basni
3.	District	Jodhpur City West
4.	Offences alleged in the FIR	Sections 8/15, 25 of the NDPS Act
5.	Offences added, if any	Section 8/15 A of the DPS Act
6.	Date of passing of impugned order	01.08.2024



2. His first bail application being SBCRLMB Nos.6446/2024 was dismissed as not pressed by this Court vide order dated 29.05.2024. Hence, the instant application for bail.

3. It is contended on behalf of the accused-petitioner that the petitioner is arrested in this 14.05.2024 on the basis of statement of co-accused, however he was not present at the spot thus, no case for the alleged offences is made out against him and his incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioner and he has been made an accused based on conjectures and surmises.

4. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.

5. Have considered the submissions made by both the parties and have perused the material available on record.

6. Perusal of the record revealing that the petitioner is behind the bars in this case since 14.05.2024. He has been made accused on the basis of statement of co-accused and there is not an iota of evidence regarding exchange of calls between the petitioner and the co-accused. Neither the present petitioner was present at the spot nor any recovery has been affected from his possession. The petitioner is lying behind the bars on the baseless allegations of his indulging in transportation of illegal contraband.

7. If it is an information under Section 27 of the Evidence Act, something is required to be recovered or discovered in pursuance



of the information supplied under Section 27 of the Evidence Act which distinctly relates to the commission of the crime. It is the admitted case of prosecution that in pursuance of the information furnished under Section 27 of the Evidence Act regarding the culpability of the petitioner, nothing new was disclosed, recovered or discovered. This court is of the view that at least there must be some corroborations or support to verify the confession made by the accused to the Police Officer while in lockup.

8. It has been held by Hon'ble the Supreme Court in the case of **Mohd. Inayatullah Vs. State of Maharashtra**, reported in AIR 1976 SC 483 that in order to apply Section 27 of the Indian Evidence Act, only the components which are essential or were the cause of the discovery would be considered to be legal evidence.

The relevant paragraph of the judgment reads as under:-

“For the application of Section 27 the statement must be split into its components and to separate the admission portion. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected.”

9. It can be manifested from a simple reading of Section 27 of the Evidence Act and the judgments referred above that only information in the form of confession received from disclosure made by an accused cannot be taken as reliable piece of evidence in isolation until there is a discovery or a recovery or another fact to corroborate the said information and prove its veracity. Precisely, it can be said that Section 27 of Evidence Act is an exception to Sections 24, 25 and 26 of Evidence Act, however, the



exception limits its admissibility only upto what is envisaged in the statute itself and not beyond that. This Court is cognizant of the provisions contained in Section 37 of the NDPS Act but considering the submissions made by learned counsel for the accused-petitioner regarding him being made an accused only on the basis of statement of co-accused.

10. Simply mentioning in the charge sheet that offence under Section 29 of the NDPS Act is made out against the petitioner is not sufficient enough to allow his incarceration until and unless any material is attached with the charge-sheet showing involvement/participation of the petitioner. For ready reference Section 29 of the NDPS Act is being reproduced as under:-

**29. Punishment for abetment and criminal conspiracy.—**

(1) *Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.*

(2) *A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-*

(a) *would constitute an offence if committed within India; or*

(b) *under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all*



*the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.*

A plain reading of the provision above makes it clear that if a person abets the other to commit the offence under the NDPS Act, or a person who hatches a conspiracy with other persons to commit an offence punishable under the NDPS Act, can be charged for the offence under Section 29 of the NDPS Act and it does not matter whether the offence was committed or not in consequence of such abetment or in pursuance of the criminal conspiracy hatched by them.

11. Abetment is defined under Section 107 of the IPC for the ready reference, the same is being reproduced hereunder:-

***Abetment of a thing.***

*A person abets the doing of a thing, who—*

*First.—Instigates any person to do that thing; or*

*Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

*Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.*

From the above, it is revealing that a person abets the fact of doing of a thing if he instigate someone to do it or a person abates the doing of a thing, if he conspire with others to do it. If an act or illegal omission occurs in furtherance of that conspiracy then it can be said that an offence of abetment was committed.





The other aspect of the provision is that if a person, while abetting the other intentionally aids or assists in doing the thing by any of his act or illegal omission, he is an accused of abetement.

Criminal Conspiracy is explained under Section 120-B of the IPC, which is as under:-

**120B. Punishment of criminal conspiracy.--**

(1) *Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) *Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]*

To invoke the provision of Criminal conspiracy there has to be an agreement of mind between two or more people to commit an illegal act or to commit an act though not illegal but done by illegal means and the parties have a common intention to commit the act.

12. What is emanating from the provision of abetement or conspiracy that there has to be an act of abetement on behalf of the accused or he must be in agreement with the other persons to do an illegal act. After minutely going through the entire charge-sheet, not an iota of evidence or tissue of the material is there to show or suggest that either there had been a meeting between the petitioner and the principal accused or there was any





exchange of calls between them or they were in any manner connected with each other or even to say that anything was done by the petitioner which somehow added/assisted/facilitated/or in any manner cooperated with the principal accused. No meeting, no CDR, no text, no messages, no recording, no piece of paper, no letter, no evidence regarding presence of both, the principal accused and the petitioner at a common place is on record.

13. True, it is that the appreciation rather meticulous appreciation of evidence is not to be done at the inception of the trial but at the same time, it cannot be forgotten that here is an issue of releasing a person on bail who has been detained from 14.05.2024 for accusation of committing an offence in a particular provision, at least, there must be something to either corroborate/bolster, to support or verify the saying of the police officer that the petitioner either abetted or was in conspiracy with the principal accused. Had it been the case that soon after or at the time of recovery of the contraband; the principal accused made a disclosure regarding involvement/participation of the accused, if the same was disclosed by him, then the fact situation may be different. But strangely, here in this case, nowhere the principal accused from whom the contraband got recovered ever named the petitioner. What would be the basis for the trial of this accused? Whether only the assertion of the police officer that petitioner is guilty of the charge without single piece of proof; Whether the same as mentioned above, would be sufficient enough to keep a person detained for an indefinite period; Whether in the circumstances mentioned above, the embargo



contained under Section 37 of the NDPS Act would come in the way of granting bail; Whether at this stage of judicial proceeding it would be appropriate to declare that he is not guilty of the offence. No, never. It is neither expected nor desirable from a High Court, since doing so, would mean culmination of the trial at its infancy.

14. Moving on to the impediments contained under Section 37 of the NDPS Act, it is considered relevant to refer to the recent ruling passed by Hon'ble the Supreme Court in **Mohd Muslim @ Hussain V. State (NCT OF DELHI) Vs. State (NCT of Delhi)** passed by Hon'ble the Supreme Court in Special Leave Petition (Crl.) No.915 of 2023 vide order dated 28.03.2023, wherein while discussing the parameters of Section 37 of the NDPS Act, it was held that the provision cannot be construed in a manner that would render the grant of bail impossible. The accused-appellant in the aforementioned case was directed to be enlarged on bail looking to the long period of incarceration. The paragraphs of **Mohd. Muslim @ Hussain (supra)** relevant to the present matter are reproduced below:

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 1 Special Leave Petition (CRL.) NO(S). 915 of





2023, decided on 28.03.2023. 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within





constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

(Emphasis Supplied)

In the case of **Mohd. Muslim @ Hussain** (Supra) it has been propounded that at the stage of hearing a bail application under Section 439 Cr.P.C., although it is not possible to make a definite opinion that they are not guilty of the alleged crime but for the limited purpose for the justifiable disposal of the bail applications, a tentative opinion can be formed that the material brought on record is not sufficient enough to attract the embargo contained under Section 37 of the NDPS Act. Though specific arguments have not been conveyed but looking to the fact that the accused is in custody, this court feels that the accused are not supposed to establish a case in support of his innocence rather his detention is required to be justified at the instance of the prosecution, therefore, this court went deep into the facts of the case and the manner in which the entire proceedings have been undertaken. If other surrounding factors align in consonance with the statutory stipulations, the personal liberty of an individual can not encroached upon by keeping him behind the bars for an indefinite period of time pending trial. In view of the above, it is deemed suitable to grant the benefit of bail to the petitioner.

15. Accordingly, the instant second bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner,





named above, shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

**(FARJAND ALI),J**

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