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MCRC-38010-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 30th OF SEPTEMBER, 2024MISC. CRIMINAL CASE No. 38010 of 2024*KACHRULAL**Versus**UNION OF INDIA*

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Appearance:

Shri Palash Choudhary - Advocate for the applicant.

Shri Manoj Kumar Soni, learned counsel for the respondent.

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ORDER

1. This is the second bail application filed by the applicant under Section 439 of the Cr.P.C. The applicant is being implicated in connection with Crime No.4/2023, registered at police station CBN, Mandsaur for commission of offence punishable under Section 8 / 15(c), 8 / 18(c), 8 / 25 and 29 of the NDPS Act.

2. The first application bearing M.Cr.C.No.16302 of 2024 was dismissed as withdrawn by order dated 29/7/2024.

3. As per the prosecution, on 9/6/2023, on receipt of a secret information the police party conducted a search of the house situated at Ward No.2 Gram Chirmoliya, post Afzalpur, Mandsaur belonging to co-accused Rahul. On the search total 183.650 Kgs of contraband poppy straw along with 1.050 Kg of opium was recovered from the house which was kept without a valid license. Thereafter a memorandum of co-



accused Rahul was recorded under Section 27 of the Evidence Act in which he stated that it is the applicant who had supplied the contraband to him on the basis of which the applicant has been implicated and arrested for the present offence.

4. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the case. Besides the memorandum of co-accused Rahul recorded under Section 27 of the Evidence Act there is no other legally acceptable evidence available on record against the applicant. No recovery has been made from the applicant and he was not present at the spot at the time of recovery. Though certain whats app chats have been produced by the prosecution but they are not legally admissible evidence. The amount which has been stated to have been paid for the transaction has not been shown to be connected to the applicant. Investigation has been completed and charge sheet has been filed hence further custodial interrogation of the applicant is no longer required. The trial is likely to take time for its conclusion. On such grounds, prayer for grant of bail to the applicant has been made.

5. Learned counsel for respondent / CBN has vehemently opposed the application and has submitted that taking into account the mandatory provision of Section 37 of the NDPS Act, the applicant is not entitled to be released on bail. There is a direct evidence connecting him to the main accused Rahul. The applicant as well as Rahul have given their confessional statements under Section 67 of the Evidence Act which for



the present are bound to be considered.

6. I have considered the submissions of the learned counsel for the parties and have perused the record.

7. The implication of the applicant appears to be primarily on the basis of memorandum of co-accused Rahul recorded under Section 27 of the Evidence Act and his own memorandum. No recovery has been made from the applicant and he was not present on the spot at the time of recovery. Whats app chats which have been produced by the respondent do not conclusively point to the involvement of the applicant. The payment which has allegedly been made in the matter has not been shown to be directly connected to the applicant. There does not appear to be any other legally admissible evidence against the applicant. In such circumstances, the bar under Section 37 of the NDPS Act is not attracted to the present case. Investigation has been completed and charge sheet has been filed hence further custodial interrogation of the applicant is no longer required. He is in custody since 3/4/2024 and the possibility of the trial taking time for its conclusion cannot be ruled out. The applicant is not shown to be having any criminal antecedents. Thus in my opinion, the applicant deserves to be enlarged on bail.

8. Accordingly, without commenting on the merits of the case, the application filed by the applicant is allowed. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of Rs.2,00,000/- with one solvent surety of the like amount to the



satisfaction of the trial Court for his regular appearance before the trial Court during trial with a condition that he shall remain present before the Court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

9. This order shall be effective till the end of the trial, however, in case of bail jump, it shall become ineffective.

Certified copy as per rules.

(PRANAY VERMA)
JUDGE

SS/-