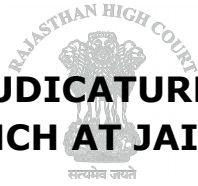


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No. 10340/2023

Bherulal Meena S/o Udayram, Aged About 27 Years, R/o Proliya,
Police Station Bhanpura, District Mandsaur (M.p.) (Presently
Confined In Sub Jail Ramganjmandi, Kota)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Avatar Singh
Mr. P.L. Saini

For Respondent(s) : Mr. Chandragupt Chopra, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

14/09/2023

1. The instant bail application has been filed under Section 439 of Cr.P.C. on behalf of the petitioner, who has been arrested in connection with FIR No.31/2023 registered at Police Station Kanwas, District Kota Rural for the offences under Section 8/18 of NDPS Act.

3. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in this case. He further submits that mandatory provisions of Sections 42 & 52-A of the NDPS Act have not been followed in the instant case. He contends that search was made in between sunset and sunrise but no memo of reasons/grounds for his belief was prepared by the seizure officer. It is also contended by counsel for the petitioner that samples were not drawn in presence of magistrate and as such, the entire recovery proceedings are vitiated. He places reliance upon the

following judgments:-

**(i) State of Orissa vs Laxman Jena,
reported in 2009 Vol.16 SCC 332.**

**(ii) Union of India vs Mohanlal (2016) 3
SCC 379.**

4. He submits that the charge sheet has been filed before the learned court below and the petitioner is in custody since date of arrest and trial of the case will take considerable time. He thus, prays that the bail application may be accepted and the petitioner may be released on bail.

5. Per contra, learned Public Prosecutor vehemently opposed the bail application.

6. I have considered the arguments advanced by learned counsel for the petitioner as well as learned Public Prosecutor and perused the material available on record.

7. There is requirement of law that whenever any search is made between sunset and sunrise, the authorized officer is required to record his reasons/grounds for such belief but in present case, such reasons were not recorded and no separate memo was prepared. I fortify my view from the ratio decided in the case of **Laxman Jena (supra)**.

8. Having regard to the facts and circumstances of the case and considering the arguments advanced by learned counsel for the parties especially the fact samples have not been drawn in presence of magistrate, which prima facie indicates a non-compliance of the mandatory provisions of Section 52-A of the

NDPS Act, that the mandatory provisions regarding collection of sample prescribed in the standing order No.1/1989 issued by Central Government as well as the guidelines laid down by the Hon'ble Supreme Court in **Mohan Lal (supra)**, I am of the view that the petitioner is entitled to be released on bail.

9. This bail application is accordingly allowed and it is directed that accused petitioner- **Bherulal Meena S/o Udayram** shall be released on bail provided he furnishes a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) together with two sureties in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

(ANIL KUMAR UPMAN),J

56-Nirmala