IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 7th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 1973 of 2024

BETWEEN:-

MANOJ S/O RATANLAL KHATRI, AGED ABOUT 48 YEARS, OCCUPATION: AGRICULTURE R/o: SURAJPOL, THAWARIYA BAJAR, RATLAM DISTRICT RATLAM (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SANJAY KUMAR SHARMA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION DALODA MANDSAUR DISTRICT MANDSAUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SAGAR MULEY - PP)

This application coming on for admission this day, the court passed the following:

ORDER

This is first application under Section 439 of the Cr.P.C. filed on behalf of the applicant in connection with Crime No. 536/2023 registered at Police Station Daloda, District Mandsaur (M.P.) under Section 8/21, 22 , 29of NDPS Act.

2. As per prosecution, on receiving a secret information, police reached at Mhow Neemuch Road in front of Tehsil office Daloda and apprehended the present applicant along with his moped bearing registration No.MP.43.EK-3496. It is alleged that upon personal search of the applicant, allegedly from

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the left side of his pant pocket 10 grams of illicit MD contraband has been seized.

3. Counsel for applicant submits that the quantity of 10 gram MD would amount to non commercial quantity. He referred the definition of commercial quantity defined u/S.2(viia) of NDPS Act which reads as under:-

> *"[(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central government by notification in the Official Gazette;]"*

4. He has further referred notification issued by the Ministry of Finance in exercise of the powers conferred by Clauses (viia) and 23(a) of Sec.23 of The Narcotic Drugs and Psychotropic Substances Act, 1985. The aforesaid Schedule/Table prescribes small quantity in Column No.5 and commercial quantity in Column No.6. The contraband MD is mentioned at Sl.No.134 as MDMA Ecstacy and small quantity is mentioned 0.5 gram and commercial quantity is 10 gram. It is argued that as per the definition of commercial quantity contained under Clause 2(viia) of the Act, the quantity specified by Central Government should be greater than the quantity prescribed in the notification. The word "any quantity greater than the quantity" is specified by the Central Government has been considered by the Full Bench of Himachal Pradesh High Court in Criminal MP(M) No.1101/2002 decided on 13.6.2003 reported in ***2003(3) Crimes 323 Ratto Vs. State of Himachal Pradesh*** wherein it has been held that the word greater means that the quantity which is specified in the notification, should be more than the quantity specified for considering the same to be commercial quantity. He further submits that the aforesaid view has also been taken by co-ordinate bench in the case of ***Anil***

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Kumar Vs. Lakhansingh in ***M.Cr.C. No.2822/2006*** while considering the grant of default bail u/S.167(2) of Cr.P.C held that the quantity prescribed in the notification in the table if is not greater than it has to be construed as non-commercial quantity and the benefit of default bail was granted considering the period of 60 days for filing of the charge sheet as non-commercial quantity. He also placed reliance on the order passed by the co-ordinate bench at Jabalpur in ***M.Cr.C. No.43173/2023*** in the case of ***Raju Kori Vs. State of MP*** wherein the court has taken the same view relying on the judgment passed by Full Bench of Himachal Pradesh in the case of ***Ratto*** (supra).

5. Counsel for State submits that at the time of weighing, the quantity of the contraband was found to be 10.01 gram and, therefore, it is more than commercial quantity prescribed in the table and, therefore, bar u/S.37 of the Act would apply.

6. After hearing learned counsel for parties and taking into consideration the judgment passed by the Full Bench in the case of ***Ratto*** (supra) and also the order passed by co-ordinate bench in the case of ***Anil Kumar and Raju Kori*** (supra), this court is of the view that since the quantity as per the panchnama has been shown to be 10 gram of MDMA which is prescribed as commercial quantity in the notification, but as per the definition of Sec.2(viia), it should be greater than the quantity specified by the Central Government. The quantity of seized contraband is non-commercial quantity and therefore, bar under section 37 of NDPS Act would not apply.

7. The submission of learned counsel for State that while weighing the contraband, quantity was little greater than the quantity prescribed in the notification, cannot be appreciated at this stage in view of the quantity mentioned in seizure memo as 10 gram of contraband. It is a matter of

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evidence whether at the time of weighing contraband was weighed with polythene or separately.

8. Counsel for applicant submits that the applicant is in custody since 19.11.2023. The investigation has been completed and charge sheet has been filed. This is first case of NDPS against the present applicant.

9. Counsel for State opposed the prayer, however, fairly submits that this is first case of NDPS against the applicant except one case of gambling.

10. After hearing learned counsel for parties and considering that the alleged seized quantity of contraband is non-commercial quantity, the investigation has been completed, charge sheet has been filed and there is no criminal record of NDPS against the applicant, I am of the view that the applicant is entitled for grant of bail. Therefore, without expressing any view on the merits of the case, the application is allowed.

11. It is directed that Applicant shall be released from custody upon furnishing a personal bond of Rs.1,00,000/- (Rupees One lakh Only) with one surety of the like amount to the satisfaction of the Ld. Court below.

12. It is further made clear that if it is found that the applicant is involved in any other case during the trial, this bail order shall stand cancelled automatically without reference to the Court and the Police will be at liberty to arrest the applicant.

13. A typed copy of this order is being forwarded to the Office of the Advocate General, on their email address, for intimation to the Police Station concerned. The office is requested to forward a copy of this order to the Ld. Court below.

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(VIJAY KUMAR SHUKLA)
JUDGE

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