IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 16th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 43173 of 2023

BETWEEN:-

RAJU KORI S/O NATTHU KORI, AGED ABOUT 28 YEARS, OCCUPATION: LABOUR, RESIDENT SHRIRAM COLONY PANNA, DISTRICT PANNA (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SANDEEP KUMAR JAIN WITH SHRI CHANDRA SHEKHAR PATEL - ADVOCATES FOR THE APPLICANT.)

AND

THE STATE OF MADHYA PRADESH THROUGH P.S. SLEEMANABAD DISTRICT KATNI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI S.K. KASHYAP - GOVERNMENT ADVOCATE)

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

ORDER

This is third application on behalf of the applicant under Section 439 of the Code of Criminal Procedure for grant of bail in connection with FIR/Crime No. 275/2022 registered at Police Station Sleemnabad, District Katni for the offence under Section 8/20 of the NDPS Act. The applicant is in jail since 02.06.2022.

2. The earlier applications of the applicant were dismissed as withdrawn vide orders dated 10.02.2023 and 26.04.2023 passed in MCRC Nos.6672/2023 and 17489/2023 respectively.

3. Learned counsel for the applicant submits that applicant alongwith two

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other co-accused persons was arrested by the police as they were found in illegal possession of 20 Kgs. of Ganja. He submits that this is first case registered against the applicant and he has no criminal past in his account. He submits that the quantity of Ganja, which has been seized i.e. 20. Kgs., is not the commercial quantity and it comes under the definition of medium quantity. He submits that as per the definition given in Section 2(viia) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), the commercial quantity would be the quantity greater than the quantity specified by the Central Government by notification in the official gazette. He submits that although as per the notification issued specifying small quantity and commercial quantity, quantity of 20 Kgs. Ganja is defined as commercial quantity but as per the the definition of commercial quantity given in Section 2(viia) of the NDPS Act, the said quantity comes under the medium quantity. Therefore, the quantity of Ganja seized from the applicant alongwith other co-accused persons cannot be said to be the commercial quantity and there is no bar in considering the bail application. He has also relied upon a judgment rendered by the Division Bench of Himachal Pradesh High Court (DB) in Crl. MP (M) No.1101 of 2002 decided on 13.06.2003 reported in **2003 (3) Crimes 323 - Ratto vs. State of H.P.** in which this aspect has been taken note of by the Division Bench.

4. Learned counsel for the respondent/State has opposed the submission made by the counsel for the applicant and submitted that in the notification specifying the small and commercial quantity of narcotic drugs and psychotropic substances, the commercial quantity of Ganja is shown as 20 Kgs. therefore, the quantity of Ganja seized from the applicant can be treated to be the commercial quantity and bail application deserves to be dismissed.

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5. Considering the submission made by the learned counsel for the parties and after perusal of definition of small and commercial quantity of narcotic drugs and psychotropic substances defined in Section 2(viia) of the NDPS Act, I am of the opinion that the quantity of Ganja seized from the applicant cannot be treated to be the Commercial quantity and as such there is no bar for considering the application for grant of bail. Accordingly, looking to the period of custody of the applicant and the fact that the 20 Kgs. Ganja was seized from the possession of three accused persons, I am inclined to consider and allow this application. Accordingly, it is allowed.

6. It is directed that the applicant be released on bail upon his furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lakh)** with one solvent surety of the like amount to the satisfaction of the trial Court concerned for his appearance on the dates given by it.

7. It is further directed that the applicant shall abide by the conditions enumerated in Section 437(3) of the Code of Criminal Procedure.

Certified copy as per rules.

SANJAY DWIVEDI)
JUDGE

RAGHVENDRA

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