RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No. 8297/2024

Sumit Vishvas S/o Manindara Vishvas, Aged About 19 Years, R/o Murika Jaimpuri, Police Station Bhuragav, District Murika (Aasam).
(At Present Accused Petitioner Confined District Jail Neem Ka Thana).

----Petitioner

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Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Vidhut Kumar Gupta, Adv.
For Respondent(s) : Mr. Shri Ram Dhakad, PP

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

24/09/2024

1. The instant bail application has been filed under Section 439 Cr.P.C. on behalf of accused-petitioner. The petitioner has been arrested in connection with FIR No.526/2023, registered at Police Station Neem Ka Thana Sadar, District Neem Ka Thana for the offence(s) under Sections 8/20 of the N.D.P.S. Act.

2. Learned counsel for the petitioner submits that the recovered quantity of the contraband article from the possession of the petitioner is below commercial quantity. It is also contended that under Section 2(vii-a) of the N.D.P.S. Act the definition of "commercial quantity" is given and it states that *"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"*. It is

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also contended that as per the schedule under the Act, commercial quantity of 'Ganja' is prescribed as 20Kg, therefore, as per the definition given in Section 2(vii-a) of the N.D.P.S. Act, the recovered quantity of 'Ganja' falls below commercial quantity and rider imposed under Section 37 of the N.D.P.S., Act is not attracted. It is also contended that there is no criminal antecedents against the accused-petitioner, the accused-petitioner is in custody since 21.09.2023 and trial of the case may take considerable time.

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Learned counsel for the petitioner has relied upon the judgment passed by the Co-ordinate Bench in the case of **Chanda Soni (Smt.) @ Pushpa Vs. State of Rajasthan** reported **in 2010 (2) RLW 1431 (Raj.)**.

3. Per contra, learned Public Prosecutor vehemently opposes the bail application. It is contended that as per the notification issued under the Narcotic Drugs and Psychotropic Substances Act, the commercial quantity of 'ganja' is prescribed at serial No.55 as "20Kg", therefore, the quantity falls within the ambit of commercial quantity and considering the mandate incorporated under Section 37 N.D.P.S. Act, the accused-petitioner may not be enlarged on bail.

4. Heard and perused the material available on record.

5. It is admitted that from the possession of the accused-petitioner 20Kg ganja was recovered. In the matter of Chanda Soni (supra), after referring definition of "commercial quantity" it was held that the definition given under the Act keeps no room of doubt that for making a case of commercial quantity, the quantity recovered should be greater, higher, more than the quantity

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notified in the Gazette. Co-ordinate Bench also held that there is no ambiguity in the definition given under Section 2(vii-a) of the N.D.P.S. Act and literal meaning has to be given to the words "quantity greater than", so as to hold what would be recovered the commercial quantity, therefore, considering the law cited, I am also of the view that the definition prescribed under Section 2(vii-a) of the N.D.P.S. Act unequivocally states that "quantity greater than" is the quantity specified by the Central Government by notification in the Official Gazette shall fall within the ambit of "commercial quantity", therefore, considering the definition clause and law cited by the petitioner, the bail application of the accused-petitioner deserves to be allowed.

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6. Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner-**Sumit Vishvas S/o Manindara Vishvas,** in connection with FIR No.526/2023, registered at Police Station Neem Ka Thana Sadar, District Neem Ka Thana, 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.

(PRAVEER BHATNAGAR),J

Ashwani Kr Srivastava /-25

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