



S.B. Criminal Misc. Bail Application No.10088/2012
Nasir Vs. State

Date of Order: 03.10.2012

Hon'ble Mrs. Justice Nisha Gupta

Mr. Anil Upman , for the petitioner.
Mr. Amit Poonia, Public Prosecutor.

Heard learned counsel for the petitioner and the learned Public Prosecutor and perused the material available on record.

The contention of the present petitioner is that the police has not charge-sheeted the present petitioner within the stipulated period and the recovery is of below commercial quantity, hence the present petitioner should be released on bail, whereas the court below has rejected the application on the ground that the recovery is of commercial quantity and the stipulated time for filing the charge-sheet is 180 days.

Per contra, the contention of the learned Public Prosecutor is that there is no fault in the order of the court below.

The facts of the case goes to show that two persons have been apprehended on motor cycle and from the possession of the present petitioner, 1.500 kgs. opium has been recovered. Hence the recovery is of non-commercial quantity and reliance has been placed on Akhlak @ Vilasan v. State of Rajasthan (2010(2) Cr.L.R. 1542) wherein it has been held that when recovery has been made from separate possession, it cannot be joint for the purpose of





determining the quantity of recovered contraband.

Further reliance has been placed on Smt. Anita Devi v. State of Raj. (S.B.Cr.Misc. Bail Application No. 1221/2010) decided on 1.3.2011 wherein same view has been taken by the Co-ordinate Bench and it has been held that when the recovery from a particular person is alleged to have been non- commercial quantity, then upper limit to file a report under Section 173 Cr.P.C. is 60 days as laid down under Section 167(2) Cr.P.C. and the recovery from another person cannot be clubbed with the present petitioner.

Hence looking at the above, the present petitioner is entitled to be released on bail under Section 167(2) Cr.P.C. and also looking to the fact that the recovery is of non-commercial quantity.

Accordingly, the bail application is allowed and it is directed that petitioner Nasir s/o Sabir shall be released on bail in FIR No. 184/2012 P.S. Mahesh Nagar, District Jaipur City, provided he executes a personal bond for a sum of Rs.1,00,000/- along with two sound and solvent sureties in the sum of Rs.50,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

[Nisha Gupta], J.



All corrections made in the order have been
incorporated in the order being emailed.
Mangi Lal Tinwar Private Secretary.

