

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 7831/2023

Rajesh Kumar S/o Vishwanath Prasad, Aged About 30 Years, R/o
Gram Musaila, Police Station Mohanpur, Distt. Gaya (Bihar)
(Lodged in Central Jail, Jodhpur).

-----Petitioner

Versus

Union of India, through NCB.

-----Respondent

For Petitioner(s)	:	Mr. B.R. Bishnoi
For Respondent(s)	:	Mr. M.R. Pareek, Spl.PP

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
Order

REPORTABLE

21/02/2024

1. The present bail application has been filed under Section 439 of Cr.P.C. on behalf of the petitioner who is in custody in connection with F.I.R. No.VIII[10]/03/NCB/JZU/2020 of NCB, Jodhpur for the offence under Sections 8/18 & 8/29 of NDPS Act.
2. Heard learned counsel for the petitioner as well as learned Special Public Prosecutor. Perused the material available on record.
3. Learned counsel for the petitioner submits that there is no recovery of contraband from the possession of the present petitioner. He further submits that the co-accused persons from whom the recovery of contraband has been made have already been enlarged on bail by this Court. He prays that since the petitioner is 75% handicapped, therefore, he may be enlarged on bail.

4. Per contra, learned Special Public Prosecutor submits that the petitioner is involved in similar nature of cases being Case No.119/2022 registered at Police Station Dangiyawas, Case No.1/2021 registered at ASZ, NCB, Ajmer & Case No.9/2018 registered at NCB, Jodhpur and therefore, he is a habitual offender and involved himself in drug trafficking in the State of Rajasthan. He further submits that the antecedent report of the petitioner clearly suggests that if the petitioner is released on bail, there is every likelihood of him getting involved in drug trafficking/offences of the same nature again. He also submits that huge quantity of contraband (33 Kgs. of Opium) has been recovered in the present case.

5. Learned Special Public Prosecutor further submits that on earlier occasions, although the petitioner was enlarged on bail, however, on cancellation of the bail application filed before this Court, the same was allowed and the bail granted by this Court was cancelled and the petitioner was directed to surrender within a period of thirty days. However, the petitioner did not surrender before the jail authorities in time and ultimately, after a period of two years when the Hon'ble Supreme Court upheld the order of cancellation passed by the High Court, the respondent authorities took the custody of the petitioner, therefore, in such a situation, if the benefit of enlargement on bail is granted to the petitioner, he is likely to misuse the same.

6. Learned Special Public Prosecutor also submits that the case of the present petitioner is clearly distinguishable from the case of

the co-accused persons, who have been enlarged on bail as the release of the co-accused persons was on the basis of custody period which they have undergone and admittedly, the petitioner has not undergone the custody period equivalent to the co-accused persons, who have been enlarged on bail. He, therefore, prays that the bail application may be rejected.

7. I have considered the submission made at the bar and gone through the relevant record of the case.

8. Admittedly, in the present case, a huge quantity of Opium i.e. 33 Kgs. has been recovered. The allegation against the petitioner is of supplying the opium. The petitioner is found involved at least in three more cases of dealing in narcotic substances in the State of Rajasthan and three different FIRs have been registered against him and the trial of the same are pending consideration before the trial Courts. This Court feels that the liberty granted by the Courts by enlargement of the petitioner on bail has been grossly misused by him by involvement in the offences of the like nature repeatedly. The enlargement of the person on bail is always on the ground that he will not involve himself or commit the offence similar to the offence of which he is accused or suspect of the commission of which he is suspected. The involvement of the petitioner in the offences of like nature on 3 occasions clearly shows that he is misusing the indulgence granted by the Courts by enlargement of the petitioner on bail. The conduct of the petitioner shows that the society at large is

suffering on account of the involvement of the petitioner in such crimes.

9. The Hon'ble Supreme Court in the case of **Prasanta Kumar Sarkar V/s. Ashis Chatterjee: (2010) 14 SCC 496** has held as under:-

"12. In Prasanta Kumar Sarkar V/s. Ashis Chatterjee: MANU/SC/0916/2010: (2010) 14 SCC 496, while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors:

9..... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

(i). whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii). Nature and gravity of the accusation;

(iii). Severity of the punishment in the event of conviction

(iv). Danger of the accused absconding or fleeing, if released on bail;

(v). Character, behaviour, means, position and standing of the accused;

(vi). Likelihood of the offence being repeated;

(vii). Reasonable apprehension of the witnesses being influenced; and

(viii). Danger, of course, of justice being thwarted by grant of bail."

10. The conduct of the petitioner is that despite the cancellation of the bail, he has not surrendered before the authorities on time and the respondents had to put in motion the entire machinery to take the custody of the petitioner.

11. This Court takes note of the fact that if a person is involved on a number of occasions in drug trafficking, then it can be said that he is a habitual offender. It is also a fact that availability of drugs and sale and distribution of the same in small places/cities is increasing day by day causing lots of disturbances in the families. The young generation is being ruined by the consumption of drugs and therefore, this Court is not persuaded to take lenient view in this case.

12. Having regard to the totality of the facts and circumstances of the case, considering the seriousness of the case and the recovery of huge quantity of contraband from the possession of the petitioner and looking to the nature of accusation and gravity of the offence, I am not inclined to grant bail under Section 439 Cr.P.C. to the petitioner at this stage.

13. Accordingly, the present bail application preferred by the petitioner under Section 439 Cr.P.C. is dismissed.

(VINIT KUMAR MATHUR),J