



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

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S.B. Criminal Misc. Bail Application No. 8443/2023

(Third Bail)

Sunil son of Shri Mukna Ram, Aged- 29 years, Resident of Rawar, Police Station-Bilara, District-Jodhpur At present Resident of Plot No. 07, Teja Nagar, Behind Jaswant Singh Petrol Pump Kudi Bhagtasani, Jodhpur (Raj.).

----Petitioner

Versus

State Of Rajasthan through PP

----Respondent

For Petitioner(s)	:	Ms. Deepika Soni.
For Respondent(s)	:	Mr. Mahipal Bishnoi, PP.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

14/07/2023

1. The Present third petition under Section 439 of the Code of Criminal Procedure is for grant of regular bail in case bearing FIR No. 66/2022 under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act") registered at Police Station Kudi Bhagtasani, District Jodhpur. The first and second applications for bail were disposed of without considering the merits of the case since they were both not pressed by the petitioner.



2. Arguments advanced by learned counsel for the parties were heard at length and record was also perused.

3. Let me give a very brief factual backdrop to understand the entire matter in the right perspective which are that on 02.02.2022 at Shatabdi circle, Jhalamand, Jodhpur petitioner Sunil Vishnoi was apprehended by the police with 310 grams of contraband Smack and co accused Laxman with 40 grams of Smack which they were carrying with their person. S.H.O. Chanana Ram of police station Kudi Bhagtasani arrested both the accused and FIR mentioned above was registered. Petitioner Sunil Vishnoi was arrested on the same day and since then he is in custody. After investigation, charge-sheet was filed against the accused and statement of investigation officer PW-1 Kishanlal has already been recorded during the trial. Now petitioner has approached this Court by way of this application for bail preferred under Section 439 Cr.P.C.

4. Learned counsel representing the petitioner vehemently urged that there is no evidence worth the name on record to connect the petitioner with the alleged crime. It is submitted that in this case, person of the petitioner was searched but the compliance with the requirements of Section 50 of the NDPS Act is utterly doubtful, fake and fabricated. It is argued that notices allegedly given under Section 50 of the NDPS Act were forged by the police; that notice, which was said to be given to accused Sunil Bishnoi at Shatabdi Circle Jodhpur, on February 2, 2022 at 11:00 PM, was actually not given to him because it bears the signature of co accused Laxman as a mark of receipt; that there



are two accused namely Sunil Vishnoi and Laxman respectively. Both the notices under Section 50 have been given to the co-accused Laxman. Later, on realizing the mistake, another notice of the same date, time and place was said to be given under section 50 to petitioner Sunil Vishnoi. In the notice given later, neither the signatures of witnesses Dinesh and Bhagirath are there nor the F.I.R. number, offence or the name of the police station are mentioned on the subsequent notice like the previous notice. It is also argued that the signature of the S.H.O. on all other memos, including the Section 50 notice given earlier, is altogether different from the signature on the forged notice, which clearly proves that subsequent notice has been made fake.

5. It is further contended that failure to comply with said provision renders the recovery of the contraband, suspect and vitiates the recovery. In this context, the fact that signatures on the Section 50 notices were forged assumes significance since the petitioner was not informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate if he so desired. It is further argued that once the recovery itself is found to be illegal, being in violation to the provisions of Section 50 of the Act, it cannot form the foundation for conviction, consequentially, the bar under Section 37 NDPS Act would not apply, resultantly the petitioner is entitled to grant of bail during the pendency of the trial, he argued.

6. Per contra, the learned PP would submit that these are factual issues which cannot be addressed at this stage and ought to be determined only after trial; that in the circumstances, there



was due compliance with the mandate of Section 50 NDPS Act. The bar as contained in Section 37 of the NDPS Act is attracted; that release of accused will hamper the trial. The respondent Counsel would also point out that the petitioner has been charged for the offences punishable by severe punishment and the very harshness of the penalty is demonstrative of the severity of the crime. He would also submit that the accused do not deserve any sympathy as the petitioner is a drug peddler. Contraband of commercial quantity has been seized from the accused; He thus, craves rejection of the petitioner's bail application.

7. I am aware of the fetters imposed by Section 37 of the Act but having considered the arguments addressed by counsel for the petitioner, particularly the fact that the procedure adopted by the seizure officer during the alleged seizure, as noted from the challan papers, prima facie did not show the compliance of Section 50 of the Act in its true spirit. The petitioner is in custody since 02.02.2022, there has been prima facie serious doubts with regard to the compliance with Section 50 (1) NDPS Act, investigation is complete, besides Challan has been presented and statement of investigation officer PW-1 Mohabata Ram has been recorded as well.

8. So viewed, I do not intent to go into the merits of the matter and say no more, except that the conditions of Section 37 of the Act should be taken to be satisfied for the purpose of anesthetizing the incarceration and ordering restoration of liberty to the accused on bail.



9. Therefore, without commenting any further on the merits of the present case as a whole, with reference to material placed before me this court feels that the accused has available to him, substantial grounds so as to question the prosecution case.

10. Consequently, petitioner is entitled to be released on bail.

11. Accordingly, the present third petition is allowed and the petitioner Sunil S/o Mukna Ram is ordered to be released on bail in connection with the F.I.R. No. 66/2022 registered at Police Station Kudi Bhagtasani, District Jodhpur provided he furnishes a personal bond and two surety bonds of sufficient amount to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so. This order is subject to the condition that accused, within 7 days of his release and sureties, on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C in future.

(RAJENDRA PRAKASH SONI),J

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