IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 3rd OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 42708 of 2023

BETWEEN:-

DHEERAJ MISHRA S/O SHRI RAJENDRA MISHRA, AGED ABOUT 36 YEARS, OCCUPATION: TEACHER R/O BHAGMARI GADDI ALLPUR PRAYAGRAJ (UTTAR PRADESH)

.....APPLICANT

(BY SHRI ANIL KHARE - SENIOR ADVOCATE WITH SHRI PRIYANK AGRAWAL - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH P.S. CHAKGHAT DISTRICT REWA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI S.M. PATEL - PANEL LAWYER)

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

ORDER

This is third bail application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail relating to FIR No.182/2022 dated 10.08.2022, registered at Police Station - Chakghat, District - Rewa (M.P.) for commission of offence punishable under Section 8(c) r/w 21(c) of the NDPS Act, Section 25-(1B) of Arms Act (as per statement of charges dated 28.04.2023). Applicant is in detention since 10.08.2022.

2 . Applicant's earlier bail applications were dismissed on merits vide order dated 12.12.2022, passed in M.Cr.C.No.54109/2022 and order dated

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12.04.2023, passed in M.Cr.C.No.8912/2023.

3. As per the prosecution story, on 10.08.2022, a secret information was received by Sub Inspector Chetan Marskole that Dheeraj Mishra along with co-accused Ajay Pratap Singh and Ashutosh Pandey is travelling in a white colour Swift car bearing registration No.UP-70-EP-2049 with a large quantity of prohibited drug cough syrup and is coming from Prayagraj side to Rewa. The said information was reduced into writing. After completing necessary formalities, a team was formed to apprehend the said persons who, according to secret information, were carrying narcotic drugs. Police team along with the independent witnesses reached near half built, Chakghat Toll plaza and barricaded the area. After sometime, they saw a white colour car coming from the Prayagraj side. The driver of the car seeing the barricades stopped it little away from the barricadings and all the three persons attempted to flee from the spot. With the help of the police force, one person was apprehended while two persons succeeded in fleeing from the spot.

4. The person who was apprehended on spot, introduced himself as Dheeraj Mishra, a 37 years old resident of Bhagmari Gaddi Allapur Prayagraj. After completing the formalities, in search of the Swift car bearing registration no. UP-70-EP-2049, a white colour bag was found kept in which they were carrying 110 bottles of Onrex Cough syrup batch no.ONCS 1787. Every bottle was of 100 ml. When he was asked to produce the valid papers and licence for possessing and carrying such large quantity of the narcotic drug, he could not produce any licence or the valid paper. Two bottles, from the seized bottles were taken out for sample purposes. Seizure memo was prepared. Samples were also sealed. One country made pistol with live cartridges and one chain of yellow metal were also seized. The car bearing registration no. UP-70-EP-2049

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in which aforesaid narcotic drug was being transported was also seized

5. Learned counsel for the applicant has submitted that in trial, seizure witnesses Sher Bahadur Singh (PW1) and Vipin Dwivedi (PW2) have already been examined and they have turned hostile as they have not supported the factum of recovery of contraband from the possession of the applicant. Therefore, on this ground only, applicant may be released on bail. It is further submitted that applicant is in jail fore more than one year and two months and in this period prosecution has examined only two witnesses. As trial of the case will take considerable time, applicant may be released on bail. Learned counsel has placed reliance on ***order dated 24.08.2023, passed in M.Cr.C.No.37590/2023 (Anil Keshri Vs. State of M.P.)*** of this Court whereby accused was released on bail. Placing reliance on an order passed by the Hon'ble Apex Court in ***Simranjit Singh Vs. State of Punjab,*** reported in ***2023 LiveLaw (SC) 570*** it is contended by learned senior counsel that in this case the provisions of Section 52-A of the NDPS Act have not been duly followed. Therefore, applicant/accused may be released on bail.

6. On the other hand, learned Panel Lawyer for the State has opposed the grant of bail to the applicant.

7. As already discussed that in the case in hand, 110 bottles of Onrex Cough syrup having narcotic drugs have been seized from the conscious possession of the applicant and applicant could not assign any good reason as to why he traveled all the way from Prayagraj to the jurisdiction of Chakghat Police Station (Rewa) with such a large quantity of contraband. Section 37 of the NDPS Act regulates the grant of bail for offence involving commercial quantity of the contraband. In case of commercial quantity, accused can be released on bail

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only if the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence.

8. It is undisputed that applicant's earlier two bail applications were dismissed on merits while considering almost all the submissions. So far as the detention period of the applicant is concerned, undoubtedly, he is in detention for a period of almost 13 months and in this period only two witnesses have been examined by the prosecution but mere detention of 13 months cannot be a ground to release the applicant/accused on bail.

9. As far as the order dated 24.08.2023, passed in M.Cr.C.No. 37590/02023 (Anil Keshri Vs. State of M.P.) is concerned, in that case applicant was released on bail as in that case similarly placed co-accused was released on bail by the Hon'ble Apex Court. Therefore, on the ground of parity bail was granted.

10. In so far ***Simranjit Singh (supra)*** case is concerned in that case criminal appeal whereby appellant was convicted and sentenced was allowed and appellant was acquitted of the offence on the ground that provisions of Section 52-A of the NDPS Act have not been duly followed.

11. In the case in hand, trial is still under way and the questions regarding non-compliance or due compliance of Section 52-A of the NDPS Act have yet to be put to the investigation officer and other witnesses. Therefore, same cannot be considered at this stage of considering bail application.

12. As far as evidence of seizure witnesses is concerned that has to be appreciated or considered by the trial Court at the time of passing judgment. Hon'ble Apex Court in the case of ***Satish Jaggi Vs. State of Chhatisgarh & Ors.,*** reported in ***(2007) 11 SCC 195*** has made it clear that at the time of considering bail application High Court is not required to appreciate the

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evidence of witnesses recorded before trial Court, and it has to see only prima-facie case.

13. In this case, applicant who is resident of Prayagraj was found in possession of 110 bottles of Narcotic drugs and the said quantity comes in the purview of commercial quantity. He was also found in possession of one pistol and live cartridges with some documents. Therefore, having taken into consideration all the facts and circumstances of the case and the fact that his earlier two bail applications have already been dismissed on merits and there is no change in the circumstances, I am not inclined to take different view and to release the applicant on bail. Hence, this third bail application too filed on behalf of the applicant is dismissed.

14. However, it cannot be overlooked that applicant is in jail for last 13 months and only two witnesses have been examined so far. Therefore, learned trial Court is directed to conclude the trial of the case within six months from today. If in this period of six months, trial Court fails to conclude the trial, applicant shall be at liberty to renew the prayer for bail.

15. Registry is directed to transmit a copy of this order to the trial Court for necessary compliance.

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen

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