



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

S.B. Criminal Misc. 2nd Bail Application No. 8680/2024

Kuka Ram S/o Bhagwan Lal, aged about 55 years, resident of Near Hanuman Mandir, Village Kanpur, Tehsil Girwa, District Udaipur.

(At Present Lodged In Central Jail Udaipur)

----Petitioner

Versus

The State of Rajasthan through CBN

----Respondent

For Petitioner(s)	:	Mr. Navneet Poonia.
For Respondent(s)	:	Mr. K.S. Nahar, Special PP with Mr. Gopal Singh.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

15/07/2024

1. The applicant is under arrest in connection with crime registered pursuant to F.I.R. Number 25/2023 of Police Station CBN, Neemach, in respect of offence punishable under Section 8/18(B) of Narcotic Drugs and Psychotropic Substances Act, 1985. He has approached this Court by way of this second application for bail under Section 439 Cr.P.C.

2. Earlier, applicant made an endeavor for seeking bail by way of filing first bail application which was disposed of without considering the merits of the case since it was not pressed.

3. Before I proceed to examine the rival contentions in connection with the questions of bail, it would be appropriate to briefly state the facts of the present case which are that based on the secret information, on 14.07.2023 at around 15.30 hours, a



total of 4.400 Kgs. of contraband *Opium* was found in the possession of the petitioner under the Debari Bridge on the Udaipur-Dabok Highway in Udaipur. The petitioner was detained along with the contraband. As per seizure officer, since it was not possible to take proper action on the spot itself therefore, both the contraband and the petitioner were taken to the Narcotics Office in Neemuch, where further action of seizure and arrest was undertaken.

4. To begin at the beginning, Shri Naneet Poonia, learned counsel representing applicant has fervently argued that statement of seizure officer has already been recorded during the trial. He has drawn the attention of the Court to the statement made by this witness and contended that though the search was effected in Udaipur (Rajasthan) yet no seizure memo was prepared and no samples were taken from the contraband article on the spot; the seizure memo was prepared in the Office of Narcotics Department at Neemuch and the samples were also taken there. This has caused serious prejudice to the petitioner. According to him, the seizure memo should have been prepared at the place where the contraband article was seized from the accused.

5. He further pointed out that yet the recovery was effected but the contraband article was not seized and sealed at the spot and petitioner, his motorcycle and contraband were brought to Neemuch. The learned counsel further contended that had the search and seizure memo been prepared at the spot, it could have



been satisfactorily proved that it was from the petitioner's possession that the bag was taken. Concluding submissions, he asserted that applicant is entitled to be enlarged on bail.

6. Shri K.S. Nahar, learned Special Public Prosecutor for the State has strongly objected the different submissions made by learned counsel for the applicant and submitted that 4.400 Kgs. of contraband opium recovered from the applicant falls within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is attracted. He further submits that the seizure and sampling was in consonance with the procedure and the shortcomings pointed out by the learned counsel for the petitioner cannot be considered at this stage and are to be decided after trial only. It is further argued that there is overwhelming evidence adduced on record suggestive of the fact that bail petitioner indulges in illegal trade of narcotics; that the petitioner does not deserve any sympathy as the petitioner is a drug peddler. He thus, craves rejection of the applicant's bail application. Learned Special Public Prosecutor fortified the above made submissions by placing reliance on the judgement rendered in the case of **Khet Singh vs. Union of India AIR 2002 (S.C.) 1450**.

7. I have given my anxious consideration to the rival submissions with reference to material placed before me.

8. On perusal of the record and upon consideration of the submissions, it would be clear that statement of seizure officer Anil Kumar (PW-1) has already been recorded during the trial. In the present case, two different memos have been prepared by the



seizure officer regarding the search and seizure at different places and times. The first memo was prepared in the name of "निरुद्धी पंचनामा" on 14.07.2003 at 3:30 PM in Udaipur (Rajasthan) in which there is a simple mention of taking alleged contraband and the petitioner into detention. The second memo was prepared in the name of "पंचनामा जब्ती अवैध अफीम" at the Narcotics Office in Neemuch (Madhya Pradesh) on 15.07.2023 at 2.00 PM detailing out the seizure and arrest of petitioner. Thus, the alleged contraband remained in the custody of the preventive squad for about 24 hours without any legal action and during this period a long distance from Udaipur to Neemuch i.e. from one State to another was covered along with contraband.

9. Admittedly, the seizure officer did not prepare the seizure memo at the spot. Clause 1.5 of the Standing Instruction No. 1/88 issued by the Narcotics Control Bureau is to the following effect: -

"Place and time for drawal of sample: - *Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot".*

10. This Court is of considered view that the procedures prescribed in the Standing Orders are based on certain logic therefore, Standing Orders on manner of seizure of narcotics drugs issued by the Narcotics Control Bureau must be observed by



the probe agencies and they cannot be rendered optional for compliance or else it would be a "worthless piece of paper." Besides, non-compliance of Standing Orders may naturally invoke a reasonable doubt relating to the manner of seizure, which is the most critical part to be carried out.

11. In the case of **Khet Singh vs. Union of India AIR 2002 (S.C.) 1450**, Hon'ble the Apex Court has ruled that- *"If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence."*

12. In the instant case as noticed earlier, the petitioner and alleged contraband had remained in the custody of the preventive squad for about 24 hours without any legal action and during this period a long distance from Udaipur to Neemuch was covered.

13. As the possession of any narcotic drugs or psychotropic substance by itself is made punishable under the act, the seizure of the article from the accused is of vital importance. If there is any violation of these Standing Orders/guidelines, Courts would take a serious view.

14. In the instant case, the seizure made by the agency was *prima facie* a defective seizure since it was not as per the established standing orders. The directions contained in the Standing Instructions issued by the Narcotics Control Bureau were



not *prima-facie* complied with. The lack of compliance of these provisions necessarily imports an element of a reasonable doubt. It would therefore, not be enough for the prosecution to contend that issues of non-compliance were to be considered at the time of trial and that what prejudice is caused to the accused, had to be shown by the accused. In view of this Court, the manner of seizure in the present case, provides a sufficient ground for the appellant to be released on bail at this stage in view of the judgment passed by Hon'ble the Supreme Court in the **Kuldeep Singh Vs. State of Punjab**, reported in **AIR 2011 (SC) Suppl. 787**.

15. Having considered the material available on record; the arguments advanced by learned counsel for the applicant particularly the facts narrated above and the fact that applicant is in custody since 15.07.2023; that trial is likely to take its own considerable time and taking note of all these aspects, I do not intend to go into the merits of the matter but of the considered view that the rigor of Section 37 of the N.D.P.S. Act is duly satisfied, forasmuch this Court feels that the applicant has available to him substantial grounds so as to question the prosecution case and no useful purpose would be served by keeping the applicant in detention for an indefinite period therefore, I am inclined to grant indulgence of bail to the petitioner at this stage.



16. Consequently, the present bail application is allowed and it is directed that the accused-petitioner **Kuka Ram S/o Bhagwan Lal**, arrested in connection with the F.I.R. No. 25/2023, registered at Police Station CBN Neemach, shall be released on bail 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 copy of 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

106-Mohan/-