



[2024:RJ-JP:28385]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous 3rd Bail Application No. 2077/2024
Dheerap Singh S/o Chandra Singh, Aged About 27 Years, R/o
Kabiri Police Station Dug District Jhalawar (Raj.) (At Present
Confined In Sub District Jail, Bhawani Mandi District Jhalawar
(Raj.)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

Connected With

S.B. Criminal 3rd Miscellaneous Bail Application No. 2628/2024
Bane Singh S/o Arjun Singh, Aged About 36 Years, R/o Gunaai,
Police Station Dug, Distt. Jhalawar (Raj.) (Petitioner In Sub Jail
Bhawanimandi).

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

S.B. Criminal Miscellaneous 3rd Bail Application No. 2629/2024
Pep Singh S/o Mod Singh, Aged About 26 Years, R/o Kabiri,
Police Station Dug, Distt. Jhalawar (Raj.) (Petitioner In Sub Jail
Bhawanimandi)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Rahul Khandelwal Mr. Ali Mohd. Khan
For Respondent(s)	:	Mr. S.S. Mehla PP

HON'BLE MR. JUSTICE FARJAND ALI

**(THROUGH VIDEO CONFERENCING)****Order****05/07/2024**

1. The jurisdiction of this court has been invoked by way of filing the instant third bail applications under Section 439 CrPC at the instance of accused-petitioners. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	166/2021
2.	Concerned Police Station	Dug
3.	District	Jhalawad
4.	Offences alleged in the FIR	Sections 8/15 and 29 of NDPS Act.
5.	Offences added, if any	--
6.	Date of passing of impugned order	08.02.2024

2. The first and second bail applications of the petitioners were rejected by this Court vide order dated 06.07.2022 and 31.07.2023 being S.B. CRLMB No.518/2022, 4514/2022 and 5341/2022 and S.B. Criminal Misc. 2nd Bail Application Nos.7758/2023, 9392/2023 and 9394/2023.

3. It is contended on behalf of the accused-petitioners that no case for the alleged offences is made out against them and their incarceration is not warranted. They have been made accused on the strength of confessional statement allegedly made by co-accused Elkar Singh during police custody which is otherwise not admissible in evidence by virtue of Sections 25 and 26 of Indian Evidence Act. The said disclosure statement does not come within the ambit of Section 27 of Indian Evidence Act. Since nothing is



there on record from which involvement of the accused can be presumed, therefore, the embargo under Section 37 of NDPS Act do not come in way of releasing the petitioners on bail. There is high probability that the trial may take long time to conclude.

There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioners and they have been made an accused based on conjectures and surmises.

3. Per contra, learned Public Prosecutor opposes the bail application and submits that the alleged recovered contraband is way above the demarcated commercial quantity, thus, the impediment contained under Section 37 of NDPS Act will be attracted in the factual situation of the present case.

4. Heard and perused the material available on record. It is an admitted case of the prosecution that on 03.09.2021, SHO, Police Station Dug, District Jhalawad and his team during nakabandi, tried to intercept two motorcycles. On seeing the police party, the rider and pillion rider of both the motorcycles tried to escape their good but the police team fetched only Elkar Singh. Upon interrogation, he disclosed the names of other accomplice to be Bane Singh, Dheerap Singh and Pep Singh. The present petitioners had been made accused in this case on the basis of confessional statement of the principal-accused Elkar Singh thus, the disclosure statement of the co-accused in police custody on the basis of which the present petitioners have been made an accused in this case remains just illusory knowledge and does not become a fact proved as no fact has been discovered in consequence of the information disclosed by the co-accused, thus,



it cannot be said with certainty that the accused can be roped in for commission of offence under Section 29 of the NDPS Act.

5. If it is an information under Section 27 of the Evidence Act, something is required to be recovered or discovered in pursuance of the information supplied under Section 27 of the Evidence Act which distinctly relates to the commission of the crime. It is the admitted case of prosecution that in pursuance of the information furnished under Section 27 of the Evidence Act regarding the culpability of the petitioners, nothing new was disclosed, recovered or discovered. This court is of the view that at least there must be some corroborations or support to verify the confession made by the accused to the Police Officer while in lockup.

6. It has been held by Hon'ble the Supreme Court in the case of **Mohd. Inayatullah Vs. State of Maharashtra**, reported in AIR 1976 SC 483 that in order to apply Section 27 of the Indian Evidence Act, only the components which are essential or were the cause of the discovery would be considered to be legal evidence.

The relevant paragraph of the judgment reads as under:-

“For the application of Section 27 the statement must be split into its components and to separate the admission portion. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected.”

7. It can be manifested from a simple reading of Section 27 of the Evidence Act and the judgments referred above that only information in the form of confession received from disclosure



made by an accused cannot be taken as reliable piece of evidence in isolation until there is a discovery or a recovery or another fact to corroborate the said information and prove its veracity. Precisely, it can be said that Section 27 of Evidence Act is an exception to Sections 24, 25 and 26 of Evidence Act, however, the exception limits its admissibility only upto what is envisaged in the statute itself and not beyond that. This Court is cognizant of the provisions contained in Section 37 of the NDPS Act but considering the submissions made by learned counsel for the accused-petitioners regarding him being made an accused only on the basis of statement of co-accused, this court is of the opinion that it is a fit case for grant of bail to the accused petitioners. Be that as it may, no final observations and comments can be made at this stage, as the same may influence the course of trial.

8. Accordingly, the instant 3rd bail applications under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioners, named above, shall be enlarged on bail provided each of them furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for their appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

16-19 Mamta/-