



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

S.B. Criminal Miscellaneous II Bail Application No. 10044/2020

Omprakash S/o Bhomaram, Aged About 31 Years, B/c Bishnoi,
R/o Sarno Ki Dhani, Palina, Dist. Jodhpur. (At Present Lodged in
District Jail, Jaisalmer).

-----Petitioner

Versus

State, Through Pp

-----Respondent

Connected With

S.B. Criminal Miscellaneous II Bail Application No. 1217/2021

Sunil Kumar S/o Baburam Vishnoi, Aged About 25 Years, R/o
Kanasar, Tehsil Phalodi, Dist. Jodhpur. (Presently Lodged at
District Jail, Jaisalmer).

-----Petitioner

Versus

State, Through Pp

-----Respondent

For Petitioner(s) : Mr. Vinod Kumar Sharma, Mr. Sunil
Kumar

For Respondent(s) : Mr. Mahipal Bishnoi, PP

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order

03/02/2021

Heard learned counsel for the parties and perused
the material available on record.

The petitioner(s) has/have been arrested in FIR
No.11/2019 of Police Station Mohangarh, District
Jaisalmer for the offence(s) punishable under Section(s)



8/15 and 29 of the NDPS Act. He/she/they has/have preferred this/these bail application(s) under Section 439 Cr.P.C.

Learned counsel appearing on behalf of petitioner - **Omprakash** has submitted that after rejection of his earlier bail application, statements of the Investigating Officers namely Kishan Singh (PW-1) and Kishna Ram (PW-2) have been recorded before the trial court and from their evidence, it is clear that no material is available on record to connect petitioner - Omprakash with the commission of crime. It is also argued that the mobile, alleged to have been carried by petitioner - Om Prakash, at the time of alleged incident, is also not in his name. It is further submitted that vehicle i.e. Bolero camper being registration No.RJ-43-GA-1057, from which, the narcotic contraband has been recovered, was found by the police in an abandoned condition. It is further submitted that though, allegation against petitioner - Om Prakash is to the effect that he was transporting huge quantity of narcotic contraband in the aforesaid vehicle, but no evidence is available on record to the effect that anybody has identified him while transporting the said narcotic contraband. Learned counsel has further submitted that petitioner - Om Prakash is in custody from last around two years and since trial of the case is likely to take time, he may be enlarged on bail.

Per contra, learned Public Prosecutor has opposed the bail application preferred on behalf of petitioner - Om



Prakash and submitted that the police were having prior information regarding transportation of huge quantity of poppy straw by him in the above numbered Bolero camper, however, he broke the '*Nakabandi*' and fled away from the scene of crime by leaving the aforesaid vehicle in an abandoned condition. It is submitted that the police found the said vehicle from the place of incident and have also found huge quantity of narcotic contraband poppy straw therein. Learned Public Prosecutor, thus, submitted that enough material is available on record to connect petitioner – Om Prakash with the commission of crime. It is submitted that in view of provisions of Section 37 of the NDPS Act, petitioner – Om Prakash is not entitled to be enlarged on bail.

Having regard to the overall facts and circumstances of the case, I am not inclined to enlarge petitioner – **Om Prakash son of Bhomaram** on bail.

Hence, the bail application (**S.B. Criminal Misc. 2nd Bail Application No.10044/2020**) preferred on behalf of petitioner – **Om Prakash son of Bhomaram** is dismissed.

So far as petitioner – **Sunil Kumar** is concerned, it is submitted by learned counsel that as per the prosecution story, huge quantity of narcotic contraband poppy straw was recovered by the police from an abandoned vehicle, which was allegedly transporting by co-accused - Om Prakash. It is also submitted that co-accused – Om Prakash, after his arrest, while in police custody, gave information to the effect that Sunil Kumar



and other co-accused persons have supplied the said narcotic contraband to him. It is further submitted that except the information supplied by co-accused and the petitioner while in police custody, no other evidence is available on record to connect petitioner – Sunil Kumar with the commission of crime. Learned counsel while inviting my attention towards the statements of Investigating Officers namely Kishan Singh (PW-1) and Kishna Ram (PW-2), has submitted that from their evidence, it is clear that except the information supplied by co-accused and the confessional statements of the petitioner recorded while in police custody, no other evidence is available on record to connect petitioner – Sunil Kumar with the commission of crime. It is also argued that it is well settled that the information given by co-accused while in police custody is not admissible in evidence.

Learned Public Prosecutor has opposed the bail application preferred on behalf of petitioner – Sunil Kumar.

Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to petitioner – **Sunil Kumar son of Baburam Vishnoi** under Section 439 Cr.P.C.

Accordingly, the bail application **(S.B. Criminal Misc. 2nd Bail Application No.1217/2021)** preferred on behalf of petitioner – **Sunil Kumar son of Baburam Vishnoi** under Section 439 Cr.P.C. is allowed and it is



directed that he shall be released on bail in connection with FIR No.11/2019 of Police Station Mohangarh, District Jaisalmer provided he executes a personal bond in the sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(VIJAY BISHNOI),J

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