

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 9th OF FEBRUARY, 2022

MISC. CRIMINAL CASE No. 35531 of 2021

Between:-

KAMRUDDIN S/O SHRI IMAAM KHAN, AGED ABOUT 48 YEARS, OCCUPATION: SELF EMPLOYED R/O DABARI SUJALPUR TAHSIL SUJALPUR DISTT. SHAHJAPURA (UTTAR PRADESH)

.....PETITIONER

(Represented by Shri Sankalp Kochar, Advocate)

AND

UNION OF INDIA HOME MINISTRY THR. NARCOTICS CONTROL BUREAU DISTT. INDORE (MADHYA PRADESH)

.....RESPONDENT

(Represented by Shri J.K. Jain, Assistant Solicitor General)

MISC. CRIMINAL CASE No. 25925 of 2021

Between:-

IMRAN S/O USMAN KHAN , AGED ABOUT 45 YEARS , OCCUPATION: LABOUR DABRI, SHAJAPUR, TEHSIL-SHAJAPUR, DISTT. SHAJAPUR (MADHYA PRADESH)

.....PETITIONER

(Represented by Shri Aseem Dixit, Advocate)

AND

THE STATE OF MADHYA PRADESH THR. NCB P.S. NCB INDORE MP (MADHYA PRADESH)

.....RESPONDENT

(Represented by Shri J.K. Jain, Assistant Solicitor General)

MISC. CRIMINAL CASE No. 61566 of 2021

Between:-

RADHESHYAM S/O MOHANLAL, AGED ABOUT 45 YEARS, OCCUPATION: NOT KNOWN R/O WARD NO. 10 SUJALPUR TEHSIL SUJALPUR DISTT. SHAJAPUR M.P. (MADHYA PRADESH)

.....PETITIONER

(Represented by Shri Rohit Jain, Advocate)

AND

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UNION OF INDIA HOME MINISTRY THR.
NARCOTICS CONTROL BUREAU ZONAL UNIT
INDORE SHRI RAJESH KUMAR YADAV
INTELLIGENCE OFFICER DISTT. INDORE
(MADHYA PRADESH)

.....RESPONDENT

(Represented by Shri J.K. Jain, Assistant Solicitor General)

(Heard through Video Conferencing)

These applications coming on for admission this day, the court passed the following:

ORDER

These first applications under section 439 of Cr.P.C. have been filed on behalf of the applicants, who are behind the bars 20.12.2020 in connection with Crime No.7/2020, registered at Police Station Narcotic Control Bureau, District Indore for the offence punishable under Sections 8/20, 25, 27(a)/28 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

As per the case of prosecution, the applicants alongwith co-accused were travelling from Andhra Pradesh to Shahjapur in a white-coloured Mahindra Bolero Jeep bearing registration No.MP-53-CA-0945. On receiving an information from some reliable informant that in the said vehicle, the applicants were transporting exceedingly large quantity of contraband, therefore, the said vehicle was intercepted by the police team and after making superficial enquiry, the said vehicle was conducted to the nearest police station and on being ransacked, 80.351 kg of ganja was recovered from the said vehicle. Thereafter, a panchnama and other formalities were done and then the offence under the aforesaid sections was registered against the applicants and co-accused.

Learned counsels for the applicants submit that as per prosecution's own case, the vehicle was intercepted by the respondent on 20.12.2020 at about 5.30 pm. at Bus-stop Chauraha, Harda, where usually it remains extreme congested traffic and to thoroughly inspect the vehicle and complete other formalities, the vehicle was taken to the nearest police station, where extensive search was made and seizure memo was prepared.

Shri Kochar propounds that looking to the material available in the charge-sheet, for sure it is clear that the mandatory procedure required to have been followed, was not followed by the respondent and infact they violated the

requirement of Section 52A of NDPS Act and also the instructions issued by way of notification dated 16.01.2015. Elaborating his contention, Shri Kochar points out two major procedural flaws on the part of prosecution; first that seizure memo and other formalities were not done on spot, but were done in the police station premises and secondly, the procedure prescribed for destroying the seized contraband was not followed, therefore, the applicants are entitled to be released on bail for the reason that the prosecution has failed to observe the mandatory provisions. To reinforce his submission; he relied upon several judgments of the Supreme Court and the High Courts saying that in view of the observations made by the Supreme Court in those decisions, due to material illegality and irregularities committed by the respondent by not adhering to the mandatory requirement, whole proceedings are vitiated and implication of the applicants in the alleged offence appears to be doubtful. He placed reliance on the decisions *in re* (2004) 10 SCC 562 **Jitendra and another v. State of M.P.**; 2020 SC Online Del 2080 **Amani Fidel Chris v. Narcotics Control Bureau** and (2016) 3 SCC 379 **Union of India v. Mohanlal and another**. He submits that though the permission has been granted by the Special Court for destroying the seized contraband, but the prescribed procedure was not followed, which contained in the notification dated 16.01.2015 and also taken note of by the Supreme Court in the case of **Mohanlal** (supra).

On the preceding date of hearing, this Court directed the counsel for respondent to clarify the factual position as has been pointed out by the counsel for the applicant and in response thereto, Shri J.K.Jain, ASG by producing the entire charge-sheet, has sanguinely attempted to unravel the complexities that there was no violation of any of the mandatory procedures and submitted that the submissions made by counsel for the applicant deserve outright rejection as are factually incorrect. He vigorously opposed the bail applications and submitted that looking to the huge quantity of ganja and magnanimity of other relevant material including the fact that some of the accused having past criminal antecedents, the applicants are not entitled to be released on bail.

I have considered the submissions made by the learned counsel for the

parties and also perused the charge-sheet.

The supreme contention of the learned counsel for the applicants is that all the formalities according to the procedure should have been done on spot. Prima facie, on the basis of meticulous scrutiny, I find nothing illegal on the part of the respondent inasmuch as 'spot' does not mean a place where suspected vehicle or person is intercepted, but it means a place where search is conducted and recovery of articles is made. Inevitably, it crystallizes from the charge-sheet that at a place where the vehicle was intercepted, search or recovery was not done, but the accused persons and the vehicle were conducted to nearest police station where seizure memo and other procedural investigation was done. The charge-sheet also bespeaks that after the recovery and seizure was done, the sample was taken in presence of the Magistrate. Albeit, it was a submission of learned counsels for the applicants that the sample was taken and forwarded on 22.12.2020 and the Magistrate was approached on 23.12.2020, however, perusal of charge-sheet negates such submission and infact the sample was taken on 22.12.2020 in presence of Magistrate and it was forwarded for chemical examination on 23.12.2020. Furthermore, perusal of charge-sheet also confirms that there was no procedural flaw in seeking the permission from the Court for destroying the seized contraband. Moreso, I have also gone-through the latest judgment of the Supreme Court *in re Mohanlal* (supra) wherein the Supreme Court has elucidated that the seizure and all other proceedings of seized contraband shall be made on the spot at the time of recovery itself. In the case at hand, from the material available in the charge-sheet it is clear that the recovery and relatable procedure was done in the police station premises and that was the spot where all these proceedings were to be done and not at bus-stop Chauraha where the vehicle was intercepted.

In view of the above, I am not inclined to set-free the applicants on bail at this stage also for the reason that Section 37 of the NDPS Act postulates limitations on granting bail, if seized contraband is more than the commercial quantity.

Accordingly, the applications are dismissed.

Sudesh

