

Vimal Kumar Bairva vs State Of Rajasthan (2024:RJ-Jd:9846) on 26 February, 2024

Author: Farjand Ali

Bench: Farjand Ali

[2024:RJ-JD:9846]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
S.B. Criminal Miscellaneous Bail Application No. 8054/2023

Vimal Kumar Bairva S/o Bhanwar Lal, Aged About 23 Years,
Chandakheri, P.s Begun Dist. Chittorgarh. (At Present Lodged In
Dist. Jail, Churu).

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 8434/2023
Surendra Bhati S/o Shri Ratan Singh Bhati, Aged About 30 Years,
R/o Kareda, Police Station Kareda, Presently Residing At Behind
Bsl Meal, Vivekanand Nagar, Police Station Pratap Nagar, District
Bhilwara. (Presently Lodged In Churu Jail)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. Vijay Raj Mr. Anil Gupta
For Respondent(s) : Mr. Arun Kumar, PP

HON'BLE MR. JUSTICE FARJAND ALI

Order 26/02/2024

1. Both these bail applications have been filed under Section 439 Cr.P.C. on behalf of the petitioners Vimal Kumar Bairva and Surendra Singh Bhati, who are in custody in connection with FIR No.65/2021 registered at the Police Station Sadar, District Churu for the offence under Sections 8/18, 25 & 29 of the NDPS Act. Their bail applications have been rejected by the learned trial Court by the orders dated 16.12.2021 and 19.06.2023. [2024:RJ-JD:9846] (2 of 4) [CRLMB-8054/2023]

2. Heard learned counsel for the petitioners, learned Public Prosecutor for the State and perused the case diary and other material available on record.

3. It is the case of the prosecution that on 15.06.2021, the police team of Police Station Sadar, District Churu intercepted a vehicle which was being driven by one Surendra Singh Bhati and the another man was sitting by the driver side disclosed his name to be Vimal Kumar Bairva. Upon having suspicion and doubt regarding commission of crime, the police officer, after compliance of the provision of law made a search and seizure of the vehicle and were found 7.5 kg poppy juice from it. The accused were arrested and after conducting usual investigation, charge-sheet has been submitted against them in the Court concerned.

4. Having possession of opium more than 2.5 Kg comes within the category of commercial quantity and the recovery in this case is 7.5 Kg, which is very high than to the demarcated quantity. The discrepancy with regard to time mentioned in the different memos cannot be appreciated at this stage, as doing so, would mean meticulous examination of the evidence during the trial, which is supposed to be made by the trial Court after taking the entire evidence on record. An explanation has been sought from the Seizing Officer with regard to anomaly and the Sub-Inspector Amit Kumar submitted an affidavit deposing therein that the time mentioned on the 'Parcha Kayami' and Seizure memo was the first point of time when he reached at the spot and the entire memos were prepared on the time as mentioned in the respective memos which is evident from the recital made in the Seizure memo and [2024:RJ-JD:9846] (3 of 4) [CRLMB-8054/2023] 'Parcha Kayami'. This Court has pondered over the issue and finds that the memo of seizure reflects mentioning of initial time only which continued to 3.10 p.m. and culminated upon finishing all the work. The entire story right from the inception has been incorporated in the 'Parcha Kayami' report including reaching of the police at the spot, giving notices to the witnesses and the accused, conducting search and seizure and preparation of the memos. Prima facie, it appears that the defence is unnecessarily giving insistence on a minor defect regarding mentioning of the time, however, this Court is not giving any final opinion on this issue as the same has been left to the wisdom of the learned trial Court.

5. Now coming to the legal issue that 7.5 Kg opium has allegedly been recovered from the conscious possession of the petitioners. There is an embargo of Section 37 of the NDPS Act as per which unless there are reasonable grounds to believe that the accused has not committed the offence, the Court should not incline to grant bail.

6. At this juncture, it is felt appropriate to reproduce the excerpt of the recent judgment passed by the Hon'ble Supreme Court in the case of State by the Inspector of Police Vs. B. Ramu arising out of SLP(Crl.) No.8137/20222. Paras No. 11 & 12 are reproduced herein below:-

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

[2024:RJ-JD:9846] (4 of 4) [CRLMB-8054/2023]

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

7. Prima facie, this Court is of the opinion that the petitioner was involved in commission of crime and, therefore, in view of the fetter contained under Section 37 of the NDPS Act, I do not feel it appropriate to allow the bail petition.

8. Accordingly, the bail applications under Section 439 Cr.PC. filed on behalf of petitioners are hereby rejected.

(FARJAND ALI),J 6-Mamta/-

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