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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL**

ON THE 5th OF AUGUST, 2022

MISC. CRIMINAL CASE No. 35202 of 2022

Between:-

**DINESH KUMAR MEENA S/O PAPPULAL MEENA
SAWAI MADHOPUR (RAJASTHAN)**

....APPLICANT

(BY SHRI MUKESH SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH INCHARGE
POLICE STATION PS PADAV (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI PAWAN SINGH RAGHUWANSHI - PUBLIC
PROSECUTOR)***

.....
*This application coming on for hearing this day, the court passed the
following:*

ORDER

This is the second bail application u/S 439 of Cr.P.C. filed by the applicant for grant of bail. First bail application was dismissed as withdrawn vide order dated 30.05.2022 passed in M.Cr.C.No.24201/2022.

The applicant was arrested on 15.02.2022 in connection with Crime No.84/2022 by Police Station Padav, District Gwalior(MP) for the offence punishable under Sections 8/20 of NDPS Act.

In brief, prosecution case is that on 15.02.2022 Police Sub Inspector Prakash Chandra Chauhan of Police Station Padav got a secret information at Ghadarwali pulia near railway track, one person was roaming to sale cannabis

(ganja). After entering the information in Rojnamchasana along with force reached there by official vehicle in which investigating kid was there. As per information one person was found there. He was apprehended. On interrogation, he has narrated his name as Dinesh Kumar Meena, present applicant/accused. He was having one bag and one suitcase. He was given notice. Thereafter, his bag and suitcase were searched. In both bag and suitcase 3-3 packets were found. After opening from one packet, Sub Inspector Prakash Chandra Chauhan came to know that in packet cannabis (ganja) was kept there. Applicant/accused could not justify the possession of aforesaid contraband. Afterwards, from all six packets cannabis was taken out. Thereafter, contraband was made homogeneous and weighed by electronic weighing machine, it was 21 Kg. Out of aforesaid 21 kg cannabis, 50-50 grams of samples were taken. Aforesaid cannabis, remaining 20 kg.900 was sealed in packet. Samples were sealed in another packet as Annexure A/2. Applicant/accused was arrested on the spot. After doing investigation on the spot, Sub Inspector Prakash Chandra Chauhan lodged a F.I.R. against present applicant/accused at Padav bearing Crime No.84/2022 under Section 8/20 of NDPS Act. Thereafter, sample was sent for chemical analysis. From the report of laboratory, seized article was found as cannabis. After investigation, charge-sheet has been filed.

From the side of the applicant counsel it is submitted that the mandatory provision for taking procedure for sample has not been followed. Applicant/accused is in custody on 15.02.2022. **After investigation, charge sheet has been filed.** He should be released on bail. In support of their contention learned counsel for applicant-accused has relied on judgment passed by High Court of Judicature For **Rajasthan At Jodhpur in CrLMB**

5643/2019 (Laal Singh Vs. State of Rajasthan) on 16.05.2019 in which the same facts were taken into consideration. In that case SHO Police Station Arnod District Pratapgarh seized 1264 kg and 800 gm poppy husk contained in 57 bags. Seizure Officer first mixed all the poppy husk contained in 57 bags, on a tarpaulin and thereafter took two samples of 1 kg from bag No.1.

The Apex Court in **Netram Vs. State of Rajasthan reported in 2014 (1) CrLR (Raj.) 163** has held that if the samples from each bag containing poppy husk/poppy straw have not been collected and test by U.N.Kit has not been conducted on each bag and if the Seizure Officer has taken out some quantity of narcotic drug from each bag and after mixing the same has taken out some portion for sample, then, the same is not in conformity with the Standing Instruction No.1/88 issued by the Narcotics Control Bureau, New Delhi, particularly, Instruction No.1.7 and, as such, it cannot be said that the narcotic contraband recovered in the matter is of commercial quantity or above.

Learned counsel for applicant has also relied upon **Criminal Misc. Bail Application No. 9660/2021 (Omprakash Verma Vs.State of UP)** passed by **High Court of Judicature at Allahbad, Lucknow** Bench wherein para 6 and 11 it has been held:-

6. Learned counsel for the applicant has submitted that the general procedure for sampling provided in Standing Order No. 01 of 1989 dated 13.06.1989 has not been complied by the opposite party. He has relied upon clause 2.1 to 2.8 of the aforesaid standing order quoted herein below :-

"2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be numbered and kept in lots for

sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than

5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot".

11. The Apex Court in case of **Noor Aga v. State of Punjab(2008) 16 SCC 417** , has held in paragraphs 123, 124 and 125 that the standing order in dispute and other guidelines issued by the authority having legal sanction are required to be complied by the arresting authorities. For ready reference the aforesaid paragraphs are quoted herein below:-

"(123) Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, visavis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the subordinate authorities to comply therewith.

(124) Recently, this Court in *State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr.*, following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan* , held that statutory instructions are mandatory in nature.

(125) Logical corollary of these discussions is that the guidelines such as

those present in the Standing Order can not be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse interference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

The Apex Court in **Noor Aga (supra)** has held that standing order 01/1989 is obligatory on the part of subordinate authorities to comply therewith. In the aforesaid case in hand seizure officer while taking samples has not followed the aforesaid standing order. In the aforesaid case in hand seizure officer while taking samples has not followed the aforesaid standing orders. In both these cases Lucknow Bench of Allahbad High Court and High Court of Judicature For Rajasthan At Jodhpur had granted bail to the applicant. Apart from this applicant / accused is in custody and 17.300gms cannabis was seized which is intermediate quantity and after investigation charge-sheet has been filed.

Looking to the facts and circumstances of the case, investigation conducted on the spot by Sub Inspector Prakash Chandra Chouhan and the submissions made by learned advocate appears to be correct. The Sub Inspector despite taking sample from each six packets seized from the possession of the applicant/accused took out from all six packets of cannabis and made homogeneous. Thereafter, he took sample from the whole 21 Kg. of cannabis. This against the law as laid down by the Apex Court as aforesaid, before seizing the aforesaid contraband he had given to the present applicant/accused, notice under Section 50 of NDPS Act which is not applicable in the present case, because cannabis was found from the bag and

suitcase which were carried out by the applicant/accused and not in self search. Section 50 of NDPS is attracted when personal search of a person is required.

Looking to the aforesaid facts and circumstances of the case and the aforesaid legal assertion and applicant is in custody since 15.02.2022 and after investigation, charge-sheet has been filed, this Court is of the opinion that the application should be allowed and by allowing the application it is ordered that if the applicant deposits in cash of **Rs.50,000/- (Fifty Thousand only)** and also furnishes a bail bond in the sum of **Rs.50,000/-(Rs.Fifty Thousand Thousand only)** before the trial Court, he should be released on bail. In case of any default, cash security of Rs.50,000/- shall be forfeited without giving any notice. He will present during trial before the trial Court on each and every date. In case of non-appearance of the applicant, the case deposited by him shall be forfeited.

Application stands allowed and disposed of.

Before parting with the case, I would like to comment the manner in which seizure was made and further investigation was done by Police Sub Inspector Prakash Chandra Chouhan of Police Station Padav due to his faulty procedure of taking sample, applicant/accused on whom acquisition of having possession of commercial quantity of 21 Kgs was released on the faulty investigation done by Shri Prakash Chandra Chouhan.

Copy of this order be sent to the Additional Director General of Police, Chambal Range, Gwalior and Superintendent of Police, Gwalior for their information and necessary action and with the direction that they should hold a training programme of their police officers for doing the investigation under NDPS Act. Further, the aforesaid officers are directed to take disciplinary

action against seizing officer Prakash Chandra Chouhan and inform the registry accordingly.

The bail application stands disposed of.

**(DEEPAK KUMAR AGARWAL)
JUDGE**

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