



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

S.B. Criminal Miscellaneous 2<sup>nd</sup> Bail Application No. 4266/2022

Prahlad

(At Present Incarcerated In Central Jail, Jodhpur)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent



For Petitioner(s) : Mr. Gajendra Kumar Sinwa  
Mr. Aditya Sharma  
For Respondent(s) : Mr. Shrawan Bishnoi, PP

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Order**

**22/04/2022**

The present second bail application has been filed under Section 439 r/w Section 167 (2) Cr.P.C. on behalf of the petitioner who is in custody in connection with F.I.R. No.22/2022 registered at Police Station Ratanada, District Jodhpur for the offences under Sections 8/18 of the NDPS (Narcotics Drugs and Psychotropic Substances) Act, 1985 and Section 42 of Rajasthan Prison Rules (Amendment Act), 2015.

Heard learned counsel for the petitioner as well as learned Public Prosecutor and also perused the material available on record.

Learned counsel for the petitioner submits that the incarceration of the present petitioner is illegal as the charge-sheet in the present case was not filed within the stipulated period



of 60 days. He submits that the petitioner was arrested in the present case on 17.01.2022 on account of the fact that 95 Grams of Opium Milk was recovered from the him. He further submits that as the contraband recovered was below commercial quantity (95 Grams of Opium Milk), therefore, as per Section 167 (2) Cr.P.C the charge-sheet after investigation was required to be filed within a period of 60 days. He further submits that the 60<sup>th</sup> day after the date of arrest of the petitioner comes to 19.03.2022 and, therefore, the charge-sheet should have been filed on or before 19.03.2022 whereas, admittedly, the charge-sheet was filed on 21.03.2022. Learned counsel further submits that in view of the judgment dated 15.10.2020 passed by this Court in the **S.B. Criminal Misc. Bail Application No.4063/2020 "Ashok Siyol & Anr. Vs. State of Rajasthan"**, the petitioner is entitled to be released on bail.

Per contra, learned Public Prosecutor opposes the bail application by filing reply and submits that the delay in filing the charge-sheet was on account of the Holi Holidays and, therefore, the charge-sheet could not be filed on or before 60<sup>th</sup> day.

I have considered the submissions made at the Bar and have gone through the calculation of the days made in the impugned order dated 24.03.2022.

The admitted facts in the present case are that the petitioner was arrested on 17.01.2022 and the 60 days' period comes to an end on 19.03.2022 whereas, the charge-sheet was filed on 21.03.2022. It is settled proposition of law that if the contraband recovered is below commercial quantity, the charge-sheet is required to be filed within a period of 60 days and the period of 60



days, in no circumstance, can get enlarged. Merely because the courts were closed for Holi Holidays, the prosecution cannot get the benefit of filing the charge-sheet after expiry of the period of 60 days or the stipulated period of time mandated by law.

This Court in the case of Ashok Siyol (Supra) held as under:-

*"In view of the ratio of judgment of the Hon'ble Supreme Court in the case of Achpal and ors. (supra), the personal liberty of a person is sine qua non and therefore, if the period of 180days even if being completed on a holiday, it will not give a leverage to the prosecution to file the charge-sheet on the next working day and take into account that the charge-sheet has been filed within the prescribed period. If the charge-sheet is not filed within the stipulated period then, an accused will get the indefeasible right to be released on bail and if the accused is not released on bail then, the accrued right of an accused person is defeated. Thus, Section 10 of the General Clauses Act, 1897 will not be having any application in the facts and circumstances of the present case and the period of 180 days will be deemed to have expired on the day, on which it actually expired even if it was a holiday. Thus, in the present case, when the application for bail was filed, the outer limit of 180 days for filing charge-sheet had lapsed and the report under Section 173 of Cr.P.C. was not available with the Court and therefore, the accused gained the indefeasible right to be released on bail."*

In view of the detailed discussion made above, the present second bail application filed under Section 439 Cr.P.C. is allowed and it is directed that the petitioner **Prahlad S/o Shri Urjaram** shall be released on bail in connection with F.I.R. No.22/2022 registered at Police Station Ratanada, District Jodhpur provided he executes a personal bond in a sum of Rs.1,00,000/- (Rupees: One Lac Only) with two sound and solvent sureties of Rs.50,000/- (Rupees: Fifty Thousand Only) each to the satisfaction of the 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.

It is brought to the notice of this Court that in pursuance of the directions issued by this Court in the case of Ashok Siyol (supra) decided on 15.10.2020, the respondent-Police Department has proceeded against the erring officials by imposing the penalty orders.

At the cost of repetition, it is once again emphasized that the erring officials should not be let out easily and no leniency should be adopted while awarding lesser sentences and punishments in such cases. In this case also, the Director General of Police is directed to take appropriate departmental proceedings against the erring officials in accordance with law. The proceedings should be completed within a period of six months.

List this case for submission of the compliance report on the action taken against the erring officials on 02.11.2022.

A copy of this order be sent to the Director General of Police, Rajasthan, Jodhpur.

**(VINIT KUMAR MATHUR),J**

120-/Vivek/-

सत्यमेव जयते