

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

**S.B. Criminal Miscellaneous Second Bail Application No.
7570/2021**

Jugnu Malawat S/o Sh. Bhagchand Malawat, Aged About 31 Years, R/o Plot No. 103-A Radha Krishan Nagar Mangyawas Ps Mansarovar Jaipur (South) Presently R/o Plot No. 26 Moti Nagar Gurjar Ki Thadi Ps Shyam Nagar Jaipur Dist. Jaipur South (At Present Lodged In Central Jail Jaipur)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

Connected With

**S.B. Criminal Miscellaneous Second Bail Application No.
8482/2021**

Sonu Kumar S/o Shri Shyam Narayan, Aged About 32 Years, Resident Of Village Daulatpura, Post Subhai, Police Station Sadar Dajipur, District Vaishali, Bihar. At Present Residing At 17-C, Gali No. 14-A, Phase-3, Near Harsh Property, Jaivihar, Harphool Vihar Baprola, D C Nangli, South West Delhi- 110043. (At Present Languishing In Central Jail, Jaipur.)

-----Petitioner

Versus

State Of Rajasthan, Through P.p.

-----Respondent

For Petitioner(s)	:	Mr. Vivek Goyal Mr. Jai Kishan Yagi
For State	:	Mr. Mangal Singh Saini, PP
Investigating Officer	:	Mr. Mangilal Bishnoi, S.H.O., P.S. Vishvakarma, Jaipur West

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Judgment / Order

30/07/2021

1. Defects pointed by the registry in S.B. Criminal Miscellaneous Second Bail Application No. 8482/2021 are waived.

2. Petitioners have filed these second bail applications under Section 439 Cr.P.C.

3. F.I.R. No.90/2021 was registered at Police Station Harmada, Jaipur (West) for offence under Sections 8/20, 29 & 25 of NDPS Act.

4. It is contended by counsels for the petitioners that the first bail was rejected on 06.04.2021. Thereafter, charge-sheet has been filed. While rejecting the first bail, this Court observed that the contraband was to be delivered to petitioner-Jugnu and mobile number, whatsApp messages and photographs shared between co-accused and petitioner-Jugnu pointed towards the factum that contraband was to be delivered to the petitioner. It is also contended that two mobiles have been recovered from petitioner-Jugnu. However, one mobile was in the name of Raees. Prosecution has not made any effort to trace Raees or record his statement that he had given his SIM to petitioner-Jugnu. With regard to the other mobile, it is contended that no whatsApp or other messages were found in the mobile. It is further contended that FSL report has not been received as yet to come to the conclusion that the recovered contraband was *Ganja*.

5. It is contended by counsel for the petitioner-Sonu Kumar that the recovery was effected from three persons. The total recovery is about 39 kgs and 700 grams and if the same is divided among three persons, the same would be around 13 kgs for one person, which is less than commercial quantity. Counsel for the petitioner has placed reliance on **Roshan Sansi Vs. State of Rajasthan** in Criminal Case No. 3052 of 2020 presided by the

Court on 01.06.2020, wherein bail was granted to the accused who was booked under Section 8/29 NDPS Act on the ground that name of the accused was not appearing in the FIR and the recovery was not effected from him.

6. Learned Public Prosecutor has opposed these second bail applications. It is contended that the recovered contraband is commercial quantity. In the FIR itself, name of petitioner-Jugnu is appearing. From the charge-sheet, it is evident that WhatsApp messages were sent from the mobile of the co-accused to petitioner-Jugnu, but the same were deleted by him, but were available in the mobile of co-accused. It is also contended that it is made out from the charge-sheet that petitioner-Jugnu was to receive the contraband. The matter pertains to commercial quantity and bar under Section 37 of NDPS Act apply. It is further contended that at the time of rejection of the first bail, the merits of the case were considered.

7. I have considered the contentions.

8. The case of **Roshan Sansi Vs. State of Rajasthan** (supra) has no applicability to the facts of this case as in the present case, name of petitioner-Jugnu is appearing in the FIR itself and there are messages shared by the co-accused with the petitioner-Jugnu which have pointed out to his involvement in this case. The matter pertains to commercial quantity. This Court at this stage cannot come to the conclusion that petitioners are not guilty of the offence and that petitioners would not repeat the offence after granting bail.

11. A copy of this order be placed in connected file.

NIKHIL KR. YADAV /8-9

