

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

S.B. Criminal Miscellaneous Bail Application No. 8220/2023

Amjad S/o Maksood Ahmed, Aged About 35 Years, R/o Badi Udai, Police Station Gangapur City, Sadar, District Sawai Madhopur (Raj.) (At Present Accused Petitioner Confined In Sub Jail, Baadi, District Dholpur)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

---

For Petitioner(s) : Mr. D.K. Dixit

For Respondent(s) : Mr. S.S. Mahla, PP

---

**HON'BLE MR. JUSTICE ANIL KUMAR UPMAN (V. J.)**

**Order**

**30/06/2023**

1. Petitioner has filed this bail application under Section 439 Cr.P.C.
2. F.I.R. No.77/2023 was registered at Police Station Badi Sadar, District Dholpur for offence under Section 8/20 of NDPS Act. According to the prosecution case, on the basis of an internal information, one Honda City car bearing No.RJ-14-CH-0024 was intercepted and checked. During search of car, black colour bags were found in the car in which some packets were kept. On opening of packets green-brown colour leaves were found. On the basis of past practice, it was concluded that the alleged leaves were Ganja leaves, which was weighing 25.330 kgs. In the car, three persons including petitioner were found namely, Lekhraj Meena @ Monu and Deshraj and car was being driven by the

petitioner. At the same time, one pickup was also intercepted and searched wherein similar type of substance was found weighing about 487.73 Kgs and two persons were found namely Wakib and Sabir.

3. It is contended by counsel appearing for the petitioner that false case has been registered against the petitioner. He submits that leaves of cannabis plants come under the definition of 'Bhang' as per the definition given in Section 2(14)(i) of the Rajasthan Excise Act, 1950. As per Section 54 of the Rajasthan Excise Act, the maximum punishment could be three years. He submits that only the flowering or fruiting tops of cannabis plant comes under the definition of 'Ganja'. The other annexures like stem, leaves and roots are neutral substances. Since the seizure memo does not reflect what was the exact weight of tops and whether the tops were available or not, the bail application of present petitioner may be allowed. Section 2(14)(i) of the Rajasthan Excise Act, 1950 is reproduced as under:-

"the leaves, small stalks and flowering or fruiting tops of the hemp plant (Cannabis Sativa) including all forms known as Bhang, Sidhi or Ganja"

Counsel for petitioner submits that in similar circumstances, bail has been granted by the Apex Court in case of **Hasubhai Kamabhai Thakor Vs. The State of Gujarat in Special Leave to Appeal (Crl.) No.2523/2023**. Counsel for petitioner further relied upon the order passed by the Coordinate Bench of this Court in **SB Criminal Misc. Bail Application No.11404/2019: Mohammad Gulam Moinuddin Vs. State of Rajasthan**

whereas also in similar circumstances benefit of bail was extended.

4. Learned Public Prosecutor has opposed the present bail application. It is contended that matter pertains to drugs and in view of Section 37 of the NDPS Act, bail cannot be granted to petitioner. He thus, sought dismissal of the instant bail application.

5. I have considered the contentions.

6. Considering the contentions advanced by counsel for petitioner as well as Public Prosecutor and taking into account the view taken by the Apex Court in case of **Hasubhai Kamabhai Thakor (supra)** and order passed by the Coordinate Bench in **Mohammad Gulam Moinuddin (supra)**, I am satisfied that conditions of Section 37 of the NDPS Act are satisfied in this matter. In view of above, I deem it just and proper to allow the present bail application.

7. This bail application is accordingly, allowed and it is directed that accused-petitioner shall be released on bail provided he furnishes a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) together with two sureties in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

(ANIL KUMAR UPMAN (V. J.)),J