

PBPO010005492023



In the Court of Sh.Mohammad Gulzar,
Judge, Special Court, Pathankot.

(UID No. PB-0063)

Bail Application No. : 49/2023
CIS BA No. : 168/2023
CNR No. : PBPO010005492023
Presented on : 16.02.2023
Registered on : 16.02.2023
Decided on : 02.03.2023

Rakesh @ Ramesh, aged 32 years son of Sh.Oma Ram, resident of village
Uchhialda @ Uchiyarda, Vishnoiyo Ki Dhani, Banar, Jodhpur, Rajasthan.

...Accused-Applciant

Versus

State of Punjab
...

...Respondent

FIR No.175 dated 27.12.2022.
Under Section 18-61-85 of NDPS Act
Police Station Sujanpur.
...

Bail Application Under Section 439 Cr.P.C

Present: Sh.Rohit Kashyap Adv., counsel for the accused- applicant.
Sh.Jatinder Pal Singh, Addl. Public Prosecutor for the State.

ORDER:

1. This order of mine shall dispose of application under Section
439 Cr.P.C for regular bail filed on behalf of applicant/accused Rakesh @

(Mohammad Gulzar)
Judge, Special Court, Pathankot.
(UID No. PB-0063)

Ramesh son of Sh.Oma Ram, resident of village Uchhialda @ Uchiyarda, Vishnoi Ki Dhani, Banar, Jodhpur, Rajasthan in FIR No.175 dated 27.12.2022, under Section 18-61-85 of NDPS Act, Police Station Sujanpur.

2. The brief facts of the case of the prosecution are that on 27.12.2022 SI Surinder Pal Singh along with ASI Lekh Raj, ASI Kuldeep Raj, ASI Surinder Kumar, S/CT Vijay Gill, CT Mandeep Singh, CT Vishal Lakhotra on government vehicle bearing No.PB-35-Z-2067 being driven by CT Rakesh Kumr in connection with patrolling and search of bad elements was present at Sundarchak moarh Malakpur, where a secret informer appeared before him and gave him information that Rakesh son of Oma Ram, aged about 25-26 years, having fair complexion and small beard and Sunil son of Budha Ram, aged about 20-21 years, having wheatish colour and small beard are residents of Uchhialda, Vishnoi Ki Dhani, Jodhpur, Rajasthan and they are doing business of selling the Opium and today they have brought Opium for its supply and are standing near Adda Malakpur and they are waiting for the customers. Both of them have kept sample of Opium in their pocket and firstly they are showing the sample to their customer and when the customer choose it, then all the material which they kept in their bag and after weighing, they are giving to the customer. If raid is conducted, then they could be apprehended with Opium. The information being solid and trustworthy and as such offence

under Section 18-61-85 NDPS Act was found to have been made out. Ruqa was sent to police station through CT Vishal Lakhotra for registration of the case against the said persons, on the basis of which the present FIR was registered against the accused.

3. On 27.12.2022 accused Rakesh alias Oma Ram and Sunil were arrested. On conducting search of accused Rakesh, one small white colour weighty polythene envelope was recovered from the right pocket of his wearing pant, which was opened and on its checking Opium was recovered, which after weighing on electric scale came to 10 Grams along with polythene envelope. The recovered Opium was put into a plastic box and parcel was prepared. One black colour bag carried by Rakesh Kumar on his shoulder was opened and on its checking weighty polythene envelope of black colour and one electric scale was recovered. On opening the polythene envelope Opium was recovered, which after weighing along with polythene envelope came to 03 Kilo and it was put into a plastic box and converted into parcel and both the parcels were duly sealed by SI Surinder Pal Singh with his seal bearing impression 'SPS/1/1' and Ravinder Singh DSP (D) also sealed both the parcels with his seal bearing impression 'RS/1/1' and from the left pocket of wearing pant of Rakesh, one mobile Apple of blue colour was recovered. Both the parcels, electric scale, bag and mobile phone were taken into police possession vide separate recovery memo.

4. During the investigation accused Rakesh has disclosed that he along with his cousin brother Sunil after purchasing 03 Kilo 20 Grams Opium from the person in the name of Mifel from Chittorgarh T-point and were going from their village to Pathankot etc for selling but they were apprehended.

5. Notice of bail application was given to the State. Police record was requisitioned and received.

6. I have heard Ld. Counsel for the applicant / accused and Ld. Additional Public Prosecutor for the State and have also perused the police file.

7. Ld. Counsel for the applicant / accused has argued that the accused has been falsely implicated in this case. The alleged recovery of Opium has been falsely planted upon the accused. Nothing was recovered from the accused at the time of arrest. The accused has not committed any offence. The alleged recovery has already been effected and the accused is not required for any type of investigation. The accused is in custody since 27.12.2022. He further prayed for concession of bail

8. On the other hand, Ld. Additional Public Prosecutor for the State has argued that applicant/accused Rakesh alias Ramesh and accused

Sunil son of Budha Ram were apprehended near Adda Malikpur and one bag was holding by applicant/accused Rakesh alias Ramesh on his shoulder. On the personal search of both the accused, 10 /10 Grams Opium has been recovered and when the search of bag was conducted, then 03 Kilograms Opium was recovered. He further argued that the heavy quantity of contraband i.e. 03 Kilograms Opium has been recovered from the conscious possession of the applicant/accused.

9. During the course of arguments ASI Om Parkash No.75/Ptk, Police Station Sujampur along with police record has appeared and suffered statement that the present FIR has been registered against the applicant/accused Rakesh alias Ramesh son of Om Ram and accused Sunil son of Budha Ram, both residents of Uchhialda Vishnoi Ki Dhani Jodhpur, Rajasthan on the basis of secret information. After receiving the secret information ruqa was sent to police station by SI Surinder Pal Singh Incharge CIA Staff Pathankot. He further stated that when both the accused were apprehended near Adda Malikpur and one bag was holding by applicant/accused Rakesh alias Ramesh on his shoulder. When the personal search of both the accused was conducted, then 10 /10 Grams Opium has been recovered from them and when the search of bag was conducted, then 03 Kilograms Opium was recovered.

10. After considering the rival contentions of Ld. counsel for the

applicant/accused as well as the Ld. Additional Public Prosecutor for the State; as per case of the Investigating agency, at the time of arrest of the accused/applicant Rakesh alias Ramesh and non applicant Sunil near Adda Malikpur, one bag was holding by applicant/accused Rakesh alias Ramesh on his shoulder and on personal search of both the accused 10 /10 Grams Opium was recovered and when bag was searched, then 03 Kilograms Opium was recovered. The contraband in the shape of Opium weighing 03 Kilograms falls within commercial quantity and as such bar contained under Section 37 of the NDPS Act would be attracted. Accordingly, this Court is of the considered view that the heavy quantity of contraband i.e. 03 Kilograms Opium has been recovered from the conscious possession of the applicant/accused. Hence, keeping in view of the gravity of offence, the applicant/accused is not entitled for regular bail. Consequently, the bail application filed by the applicant is dismissed. Police record be returned. Bail application file be consigned to the Record Room.

Pronounced in the open Court.

Date of Order: 02.03.2023

**(Mohammad Gulzar)
Judge, Special Court
Pathankot**

(Ajay Kumar)
Stenographer-1

(UID No. PB-0063)

“I attest to the accuracy and authenticity of this document.”