



1 MCRC-27835-2024

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE AFR
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 14th OF AUGUST, 2024
MISC. CRIMINAL CASE No. 27835 of 2024**

VISHRAM
Versus
THE STATE OF MADHYA PRADESH

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Appearance:

Shri Sandeep Kumar Jain - Advocate for the applicant.

Shri Ajit Rawat - Govt. Advocate for respondent/State.

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ORDER

This is fourth bail application filed by the applicant under Section 483 of the Bhartiya Nagrik Surksha Sanhita, 2023 for grant of regular bail to applicant who is in custody since 18.3.2023 relating to FIR No.108/2023 registered at Police Station Khalwa, District Khandwa (M.P.) for the offences under Section 8/18 of NDPS Act.

2. Learned counsel appearing for the applicant submitted that applicant was found to be cultivating opium plants. He has placed reliance on order dated 18.11.2022 passed by Indore Bench of this Court in MCRC No.29915/2022 (**Chhogalal vs. State of M.P.**). It is submitted that in respect of cultivation of opium poppy, small quantity and commercial quantity is not specified, therefore, bar under section 37 of NDPS Act will not be applicable. Case of applicant is covered by aforesaid order passed in the case of **Chhogalal** (supra). In these circumstances prayer is made for release of applicant on bail.



3. Learned Government Advocate appearing for the State opposed the application for grant of bail. It is submitted that huge quantity of opium poppy have been seized from the applicant. Applicant was cultivating opium plants. Earlier bail application was dismissed on merits. No change in circumstances, therefore, application be dismissed.

4. Heard the counsel for the parties.

5. Opium poppy is described in Section 2(xvii)(a) as under:-

"Opium poppy" means:

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act."

6. From aforesaid definition it is clear that plant of the species *Papaver somniferum* L is covered by definition of Opium poppy. Opium plants which are seized by police will fall within definition of Opium poppy. As per section 18 of the Act, if contravention is in relation to cultivation of opium poppy of small quantity then penalty prescribed is R.I for a term of one year with fine. If contravention involves commercial quantity then penalty is not less than 10 years and fine and in other cases penalty prescribed is R.I upto 10 years. Notification is given in NDPS Act specifying small and commercial quantity. Entry 92, 93 and 110 is in respect of Opium. No entry is made in respect of Opium poppy.



Commercial and small quantity is not prescribed in said table. Since small and commercial quantity is not prescribed for Opium poppy and cultivation of Opium plants is covered under Section 18(c), therefore, Section 37 of NDPS Act will not be attracted in the case.

7. In view of aforesaid, bail application filed by applicant is **allowed**.

8. It is directed that the applicant shall be released on bail on his furnishing personal bond in the sum of Rs.1,00,000/- (Rs. One Lakh Only) **with two solvent sureties** in the like amount to the satisfaction of the trial Court concerned for his regular appearance before Court on all such dates as may be fixed in this regard during pendency of trial.

9. The applicant shall also abide by the following conditions of Section 480(3) B.N.S.S. as under:-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit any offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected and;

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

C.C. as per rules.

(VISHAL DHAGAT)
JUDGE



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