

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 28<sup>th</sup> OF APRIL, 2023

MISC. CRIMINAL CASE No. 14202 of 2023

**BETWEEN:-**

MOHIT TIWARI S/O SHRI SHANKAR DAYAL TIWARI,  
AGED ABOUT 26 YEARS, R/O GANJI K HANUMAN K PAS  
UNNAO ROAD DATIA (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SUSHIL GOSWAMI- ADVOCATE )

**AND**

THE STATE OF MADHYA PRADESH THROUGH POLICE  
STATION MURAR DISTT. GWALIOR (MADHYA  
PRADESH)

.....RESPONDENT

(BY SHRI PRAMOD PACHAURI- PUBLIC PROSECUTOR FOR THE STATE)

*This application coming on for hearing this day, the court passed the  
following:*

**ORDER**

This is the **Second** bail application u/S.439 Cr.P.C filed by the applicant for grant of bail. First application (M.Cr.C.No.56438/2022) has been allowed for interim period of one month.

The applicant has been arrested on 6.09.2022 by Police Station- Morar, District- Gwalior (M.P.) in connection with Crime No.760/2022 for the offence punishable under Section 8/22 of the NDPS Act and Sections 25/27 of the Arms Act.

In brief, prosecution case is that on 6.9.2022 police Sub-Inspector Sumitra Tigga of police Station Morar got a secret information regarding

contraband. Thereafter he along with police force and necessary investigation kit on official vehicle reached Seven Number crossing. As per the information given by the informant, two females and four males along with two others were standing along with two motorcycles. On seeing the police force, they tried to run away. With the help of police force they were restrained. When they were asked to disclose their identity, then one female told her name as Sonam Rajput wife of Satendra Rajput and the person who was driving motorcycle MP32-MD-8619 told his name as Surendra Singh Dangi son of Madhosingh, the driver of black colour Apache motorcycle on which there was no registration number told his name as Mohit Tiwari son of Shankar Dayal Tiwari, the person who was sitting on Apache motorcycle told his name as Hridesh Kushwah son of Late Bhawani Shankar Kushwah, another person who was also sitting on Apache motorcycle told his name as Om Prakash son of Ramratan Batham and other suspects told their names as Suneel @ Rahul Parihar and Mukesh Dangi son of Rammilan Dangi. Thereafter they were informed about the information received from the informant and were also apprized of their right under Section 50 of the NDPS Act that if they want, they can give their search before a Gazetted Officer. Thereafter they agreed to give their search to police force. Before taking their search, police force also gave their search. Thereafter from the possession of Sonam Rajput 110 gms MDMA has been seized, from Surendra Singh Dangi, Mohit Tiwari, Hridesh Kushwah and Mukesh Danngi 100 gms each MDMA has been seized and from Omprakash Batham and Rahul @ Suneel Parihar 105 gms each MDMA has been seized, thus total 720 gms MDMA has been seized. Sample was taken. From the possession of co-accused Hridesh Kushwah one 315 bore Katta along with 6 live cartridges have

been seized and from the possession of Omprakash one .32 bore Katta along with one live cartridge has been seized. FIR was registered at crime No.760/2022 under Section 8/22 and Sections 25/27 of the Arms Act. Appellant and co-accused were arrested. Sample was sent to Central Forensic Science Laboratory, Bhopal. The results of examination of aforesaid laboratory dated 21.10.2022 are reproduced herein below:-

"Results of examinations:

Various laboratory tests such as Chemical tests, Thin Layer Chromatography (TLC) and GC-MS were carried out with the exhibits 'A1', 'B1', 'C1', 'D1', 'E1', 'F1' & 'G1' for the detection of MDMA. The results thus obtained have been analyzed as given below:-

1. MDMA has not been detected in Exhibits "A1", 'B1', 'C1', 'D1', 'E1', 'F1' & 'G1'.
2. However Urea has been detected in exhibits A1', 'B1', 'C1', 'D1', 'E1', 'F1' & 'G1'."

Thus, as per the report of the Central Forensic Science Laboratory, Bhopal, MDMA has not found in the seized samples, however, Urea has been detected.

Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. He is in custody since 6.9.2022. Earlier he was given interim bail for a period of two months. His personal liberty as guaranteed by the Constitution has been violated on the wrongful act of the police agency. This is a clear abuse of law. Therefore, beside bail, he should be given an adequate compensation because due to wrongful act of the police agency his personal liberty has been violated.

Learned counsel for the State opposed the prayer, however, when this Court asked as to whether Urea comes under NDPS Act, then he fairly replied

that Urea does not come under NDPS Act.

Looking to the aforesaid facts and circumstances of the case, but without commenting on the merits of the case, this Court is of the opinion that the application should be allowed and by allowing the application it is ordered that if applicant furnishes a personal bond of **Rs.500/- (Rs. Five Hundred only)** without any surety to the satisfaction of the trial Court, he should be released on bail.

He will present during trial before the trial Court on each and every date.

Before parting with the case, it is observed that in the present case applicant is behind the bars since 6.9.2022 because of wrongful act of police agency. Thus, his right to personal liberty as guaranteed by Article 21 of the Constitution has been violated because of wrongful act of police agency. In this situation, this Court is of the considered opinion that a sum of Rs. ten lac should be given to the applicant as a compensation for his wrongful confinement. Looking to the aforesaid facts and circumstances of the case, Director General of Police is directed to pay a sum of Rs. ten lac to the applicant by way of compensation for his wrongful confinement within a period of two months from today and compliance report to this effect be submitted in the Registry. The Director General of Police is free to recover the aforesaid amount from the erring officials. Director General of Police is also directed to instruct its subordinate officers not to repeat such irregularity in future.

Application stands allowed and disposed of.

Copy of this order be sent to the trial Court concerned and Director General of Police, Bhopal, for compliance.

Certified copy as per rules.

ms/-

