



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 2951/2023

Salman Khan S/o Sh. Munna Khan, Aged About 24 Years, B/c Pathan Musalman, R/o Dhudharka, P.s. Dalouda, Dist. Mandsore (M.p.). (At Present Lodged In Sub Jail Gulabpura).

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

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For Petitioner(s) : Mr. Vijay Bishnoi.  
For Respondent(s) : Mr. Shrawan Kumar, PP.

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**HON'BLE MR. JUSTICE KULDEEP MATHUR**

**Order**

**12/09/2023**

This application for bail under Section 439 Cr.P.C. has been filed by the petitioner who has been arrested in connection with FIR No.49/2020 registered at Police Station Gulabpura, District Bhilwara, for offences under Sections 8/15, 8/25 and 8/29 of the NDPS Act.

As per the prosecution, during *nakabandi*, police team of Police Station Gulabpura, District Bhilwara, on 11.02.2020 at about 04.25 pm., stopped a truck having registration No.RJ-08-GB-0687. The person on the wheel on the truck disclosed his name to be Salman Khan (present petitioner) and the helper disclosed his name to be Rakesh Kharol. On search being conducted, contraband (poppy husk/straw) weighing 420 Kgs. was recovered. The petitioner was arrested on the spot.

Learned counsel for the petitioner submitted that the petitioner is in custody since 11.02.2020. It was also submitted



that trial against the petitioner has commenced but in last more than 3 years and 6 months, out of total 22 cited prosecution witnesses, only 6 have been examined till date. Learned counsel submitted that the delay in trial before the competent criminal court is not at all attributable to the present petitioner.

Learned counsel submitted that in view of the fact that the petitioner is in custody for last more than 3 years 6 months and the delay in trial is not attributable to him, he deserves to be enlarged on bail.

In support of his contentions, learned counsel placed reliance on the order dated 13.07.2023 passed by Hon'ble the Supreme Court in the case of **Rabi Prakash vs. The State of Odisha (Special Leave to Appeal (Crl.) No.4169/2023)**, wherein Hon'ble the Supreme Court held as under:-

"3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

Per contra, learned Public Prosecutor has vehemently opposed the bail application and submitted that petitioner is facing trial for the offences under the NDPS Act and, therefore, the present bail application deserves to be rejected straightway. Learned Public Prosecutor, however, was not in position to refute



the fact that in last 3 years and 6 months, out of total 22 cited prosecution witnesses, only 6 witnesses have been examined till date.

Heard learned counsel for the petitioner and the learned Public Prosecutor. Perused the material available on record.

Hon'ble the Supreme Court in the case of **Union of India Vs. K.A. Najeeb** reported in **(2021) 3 SCC 713**, while dealing with the cases where fetters are placed on Court's power to grant bail and the trial has not been completed within a reasonable time, observed as under:

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part – III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

A coordinate Bench of this Court in the case of **Umesh Vyas vs. State of Rajasthan (S.B. Criminal Misc. II Bail Application No.14958/2022)**, vide order dated 17.03.2023, also observed as follows:

"The Hon'ble Supreme Court in the cases of Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir [Special Leave to Appeal (Crl.) No.3961/2022], Amit Singh Moni Vs. State of Himachal Pradesh (Criminal Appeal No.668/2020), Tapan Das Vs. Union of India [Special Leave to Appeal (Criminal) No.5617/2021], Kulwant Singh Vs. State of Punjab [Special Leave to Appeal (Criminal)



No.5187/2019], Ghanshyam Sharma Vs. State of Rajasthan [Special Leave to Appeal (Criminal) No.5397/2019], Nadeem Vs. State of UP [Special Leave to Appeal (Criminal) No.1524/2022] and Mukesh Vs. The State of Rajasthan [Special Leave to Appeal (Criminal) No.4089/2021] has granted bail to the accused persons, against whom the allegations are of transporting or possessing narcotic contraband above commercial quantity, on the ground of custody period and taking into consideration the fact that the trial against the said accused persons will take time in completion. The Hon'ble Supreme Court has ordered for release of the accused persons who were in custody from two years to four years. Learned Public Prosecutor has opposed the bail application.

Having regard to the totality of the facts and circumstances of the case, I deem it appropriate to allow this fifth bail application solely on the ground of custody period of the accused petitioner and keeping in view the fact that the trial against him has not been completed till date.

Accordingly, without expressing any opinion on the merits of the case, this third bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioner Umesh Vyas S/o Shri Ganeshlal Ji shall be released on bail in connection with FIR No.15/2019 of Police Station Charbhuj, District Rajsamand provided he executes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial."

Having considered the rival submissions, facts and circumstances of the case and considering the fact that the petitioner has suffered incarceration for about 3 years and 6 months and the criminal trial has hardly reached the half-way mark, without expressing any opinion on merits/demerits of the case, this Court is of the opinion that the bail application filed by the petitioner deserves to be accepted.

Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner- **Salman Khan S/o Sh. Munna Khan** shall be enlarged on bail in





connection with FIR No.49/2020 registered at Police Station Gulabpura, District Bhilwara, provided he furnishes a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to so.

It is however, made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application. The trial court shall not get prejudiced by the same.

**(KULDEEP MATHUR),J**

48-Tikam/-