

(2014) 08 RAJ CK 0025

**RAJASTHAN HIGH COURT****Case No:** Criminal Misc. Bail Application No. 3621/2014

Ghisa Nath

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision:** Aug. 18, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 20 - Criminal Procedure Code, 1973 (CrPC) - Section 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 18, 29, 67, 8

**Citation:** (2015) 2 Crimes 54 : (2015) 2 WLN 162**Hon'ble Judges:** Sandeep Mehta, J.**Bench:** Single Bench**Advocate:** Shambhu Lal and Party-in-Person, for the Appellant; N.K. Rai, Special Public Prosecutor and D.L. Rathore, C.I., for the Respondent**Final Decision:** Allowed

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**Judgement**

Sandeep Mehta, J. ♦ The present bail application has been filed under Section 439 Cr.P.C. on behalf of the petitioner, who is in custody in connection with FIR No. 6/2013 registered by the Central Narcotics Bureau, Udaipur for the offences under Secs. 8/18 and 29 of the NDPS Act. Facts in brief:-

2. Acting on a prior information, a joint team of officials from Central Narcotics Bureau, Udaipur and Chittorgarh searched the house of the accused Mohandas on 27.10.2013. Upon the search being taken, illicit opium weighing 2.6 Kgs. was recovered from the premises. Mohandas upon being interrogated, gave an information that the opium was supplied by his brother-in-law Mangudas, who had brought the same in a Maruti Van and that more opium could be recovered from the house of Mangudas. Acting on the said information on the very same day, the house of Mangudas was searched and from his possession, 3.750 Kgs. of illicit opium was recovered. Mangudas upon being interrogated by the officials disclosed

that he had brought the opium from the petitioner Ghisa Nath. The investigation was handed over to the Inspector Devi Lal Rathore. He recorded the statements of Mohandas and Mangudas under Section 67 of the NDPS Act on 28.10.2013. Both the accused were subjected to medical examination on 28.10.2013 and were thereafter, produced before the concerned Court from where, they were sent to judicial custody.

3. Acting on the information given by Mangudas, a raid was conducted at the house of petitioner Ghisa Nath at the village Chawandia, Tehsil Begun, District Chittorgarh on 28.10.2013 by a team headed by J.L. Meena, Superintendent Dy. Narcotics Commissioner, Kota. The petitioner was not found present at his house. No incriminating recovery whatsoever was made from the premises. It is alleged that the Inspector Devi Lal Rathore issued repeated summons to the accused under Section 67 of the NDPS Act directing him to remain present for investigation. In the meantime, another accused namely Rajesh @ Rajkumar Soni was apprehended and after recording his statement under Section 67 of the NDPS Act, he was also remanded to judicial custody. A summon was again issued to the petitioner Ghisa Nath under Section 67 of the NDPS Act on 24.12.2013 directing him to appear in the office of the Superintendent, Central Narcotics Bureau, Udaipur on 8.1.2014. The accused allegedly appeared voluntarily before the Inspector on 24.2.2014. As per the notings on the statement, the Inspector Devi Lal Rathore purportedly started recording the petitioner's statement on 24.2.2014 at the Office of the Central Narcotics Bureau at Chittorgarh at 10 A.M. A copy of the statement has been placed on record. The statement recorded bears a certification by the Inspector that he recorded the statement at 10 AM in the morning. The statement was concluded at 1400 Hrs in one continuous sitting. The petitioner was then arrested vide arrest memo prepared at 1430 Hrs. Another material document available on record is the application submitted by the Inspector Devi Lal Rathore to the Medical Jurist, Government Hospital, Chittorgarh on 24.2.2014 requesting him to carry out the petitioner's mandatory medical examination subsequent to his arrest. The document has a very material bearing for the disposal of this bail application and thus is reproduced hereinbelow:

4. The most glaring fact revealed from perusal of the document shows that Ghisa Nath was placed under arrest and thereafter produce before the medical jurist by Shri Devi Lal Inspector. The medical jurist no. is a public servant noted on the application for medical examination that accused was produced before him for medical examination at 1.30 PM. No injuries were found on the person of the accused. The document is signed by Sh. Devi Lal Rathore the Inspector.

5. Ultimately after completing investigation, a complaint was filed by the Inspector Devi Lal Rathore in the Court of the learned Special Judge, NDPS Act Cases, Chittorgarh against the accused Mangudas, Rajesh @ Rajkumar Soni and Ghisa Nath for the offences under Secs. 8/18B and 8/29 of the NDPS Act. The petitioner has now

approached this Court by way of instant application for bail under Section 439 Cr.P.C.

6. When the matter was taken up by this Court on 16.7.2014, the learned counsel for the petitioner Shri Manish Pitaliya argued that the documents prepared by the Inspector, Devi Lal Rathore particularly the statement of the petitioner and his arrest memo are false documents as the Inspector has made false nothings of time on these documents. He urged that the law is well settled that the statement of a person recorded by the officials of the Central Narcotics Bureau under Section 67 of the NDPS Act is admissible in evidence. However, if such statement is recorded subsequent to the arrest of the deponent, then it would be hit by Article 20 of the Constitution of India. He urged that the Inspector deliberately prepared the petitioner's arrest memo showing time of his arrest to be 1430 Hrs. whereas, he was actually arrested much earlier. While recording the petitioner's statement under Section 67 of the NDPS Act, the time of conclusion has been mentioned as 2 O'Clock which is prima-facie incorrect because the petitioner had already been arrested much earlier and had been produced before the medical jurist for medical examination at 1.30 PM. Thus he contended that the Inspector Devi Lal Rathore is guilty of preparing false documents. He contended that the petitioner's statement was recorded after arresting him. Such statement could not be read in evidence against him. He further submitted that the co-accused Rajesh @ Rajkumar Soni against whom similar evidence is available has been granted bail by this Court and thus, the petitioner also deserved to be released on bail in this case.

7. In order to give an opportunity to the Inspector concerned to explain the apparent anomaly in the documents, Shri N.K. Rai, the learned Special Public Prosecutor was directed to keep the Inspector Devi Lal Rathore present in the Court. The learned Special Public Prosecutor placed on record a letter dt. 16.7.2014 by which the Inspector Sh. Devi Lal Rathore has been intimated regarding all the above facts and was asked to give his explanation about the same. Contents of the letter are very material and are reproduced hereinbelow for sake of convenience:

8. The Inspector Devi Lal Rathore appeared in the Court on 4.8.2014.

9. The advocates were observing strike and thus, the petitioner's brother-in-law appeared before the Court and reiterated the arguments earlier advanced by the petitioner's counsel. This Court made an inquiry from the Inspector Devi Lal Rathore regarding the facts set out above and also detailed in the intimation dt. 16.7.2014 sent to him by the learned Special Public Prosecutor. The Inspector candidly admitted that as a matter of fact, he had produced the accused before the medical jurist for medical examination at 1.30 PM. He submitted that there had been an inadvertent error in mentioning the time in the documents and he may be excused for the same.

10. The fact that the time of recording was mentioned wrongly on the statement of the accused and his arrest memo is duly established from a bare perusal of the application for medical examination, the contents whereof have been reproduced hereinabove.

11. From the above discussion, it is evident that the two relevant and material documents on the strength whereof, the petitioner has been implicated in this case i.e. his statement recorded by the Inspector Devi Lal Rathore under Section 67 of the NDPS Act and his arrest memo bear wrong entries regarding time. The statement's concluding line mentions that the recording of the statement was completed at 1400 Hrs. The arrest memo of the petitioner refers to the time of arrest being 1430 Hrs. The medical jurist's office is at some distance from the office of the Central Narcotics Bureau as admitted by the inspector Devi Lal Rathore whilst offering his explanation on 4.8.2014. Thus, some time must have been consumed in taking the petitioner from the office of the Central Narcotics Bureau to the medical jurist. The accused thus, must have been taken from the Inspector's office at much earlier than 1.30 PM which is the time of his being produced before the medical jurist.

12. In view of the above discussion, it is not possible to believe that the recording of the statement of the accused would have continued till 1400 Hrs as mentioned at the conclusion. Furthermore, the time of arrest mentioned by the Inspector on the arrest memo of the accused as being 1430 Hrs is also incorrect. Apparently these entries regarding time were made in order to project that the statement of Ghisa Nath was recorded before arresting him whereas, the facts speak otherwise. The application for medical examination clearly mentions that the accused was under arrest and was being produced for medical examination. The law is well settled that the statement of a person summoned and examined under Section 67 of the NDPS Act by the officials of the Narcotics Control Bureau or the Central Narcotics Bureau is admissible in evidence till such person/s are not accused of any offence and is not arrested. However, if the person has been arrested, then obviously his statement would not be admissible in evidence as the same would be hit by Article 20 of the Constitution of India. The Inspector evidently made wrong entries of time while recording statement of the accused Ghisa Nath and preparing his arrest memo in order to project that the statement was recorded while Ghisa Nath was not in custody or under arrest. The unethical action of the Inspector has been exposed as the medical jurist, before examining the accused mentioned the time of his being produced before him as being 1.30 P.M. Consequently, the arguments advanced on behalf of the petitioner that his statement was recorded after arresting him has great force. The learned trial Judge will go into the niceties of the issues when the evidence is adduced before him. Without commenting on merits but considering the overall facts and circumstances discussed above and considering the fact that the co-accused Rajesh @ Rajkumar Soni against whom also identical evidence is available on record has been granted bail by this Court, the petitioner too deserves to be released on bail in this case. Accordingly, the bail application is allowed. It is

ordered that the accused-petitioner namely Ghisa Nath arrested in connection with FIR No. 6/2013 registered at Central Narcotics Bureau, Udaipur shall be released on bail; provided he furnishes a personal bond of Rs. 50,000/- and two surety bonds of Rs. 25,000/- each to the satisfaction of the learned trial Court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.