



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

S.B. Criminal Misc(Pet.) No. 7663/2023

Falaku @ Falak Sher S/o Majeed Khan, Aged About 47 Years, R/o

Ward No. 29, Suratgarh, Dist. Sri Ganganagar.

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Pankaj Kumar Gupta

For Respondent(s) : Mr. Gaurav Singh, PP

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

18/07/2024

1. Under challenge herein is an order dated 23.11.2023 passed by the learned Additional Sessions Judge, Suratgarh, Sriganganagar, whereby application of the petitioner, who is under trial for alleged offences under Sections 8/21 and 22 of the NDPS Act, seeking summoning of an official of Municipal Council, Suratgarh along with relevant record in support of his defence evidence, has been dismissed.

2. I have heard learned counsel for the petitioner and the learned Public Prosecutor.

3. While learned counsel for the petitioner would argue that the order assailed herein is not sustainable as the sole, but erroneous premise for dismissing the same is that the petitioner could have obtained the same from the office of the Municipal Council through other means than summon the official. It also wrongly observed therein that the said documents were not relevant.



4. Per contra, learned Public Prosecutor would urge that the learned trial court has rightly observed that the documents are not relevant. In any case, petitioner ought to have obtained the same on his own, knowingly well that he intended to produce the same in his evidence at the relevant time.

5. Having perused the impugned order as well as after seeing the description and nature of the documents sought to be produced, i.e. patta of the petitioner's house as well as the ancillary documents of the file of the Municipal Council pertaining to the property in question, it does appear that the same are relevant for the purpose of defence evidence. One of the questions to be adjudicated is qua the place from where the contraband was recovered by the investigating agency. While the stand of the prosecution is that it was from the residence/house of the accused, i.e. the petitioner herein, on the other hand, the petitioner states that the address mentioned in the recovery memo of the contraband is not the same where the petitioner resides and the same would be borne out from the patta of the property in question.

6. Considering the rival stands taken by both sides, I am of the view that it would, therefore, be important to see if the address of the house of the petitioner as per patta in the records of the Municipal Council matches with the address contained in the recovery memo of the contraband.

7. No doubt, the documents sought to be requisitioned could and ought to have been produced by the petitioner on his own being a title holder of the property in question. It is not possible that he would not have the original of the same. However, given



that the petitioner states that the location of the property as per the recovery memo is not that of the house owned by him and, therefore, he is unable to prove the same unless the records of the Municipal Council with respect to the specific location of his property are produced. As regards view taken taken by the learned trial court that the same is not relevant, I am unable to thus agree with the same.

8. Other reason that seems to have weighed on the mind of the learned trial court appears to be the likely delay that may be caused in summoning the official to bring the relevant record. In that aspect, one cannot lose sight of the fact that the prosecution itself took more than 5 years to produce its evidence, whereas the defence evidence commenced only a few months ago. Trite it may sound, that justice should not only be delivered but it must also seem to have been delivered. The petitioner may end up having this lurking dissatisfaction also that he was not allowed to adduce his evidence in support of his defence. As regards delay, the learned trial court could have imposed cost on the petitioner for not doing the needful in advance instead of summarily dismissing the application.

9. As an upshot, the application filed by the petitioner before the learned trial Court is allowed and the impugned order is set aside. The petitioner shall be allowed to summon the Municipal Council official on deposit of necessary expenses accordance with law and in addition to that he shall also pay Rs.5,000/ as costs to be deposited with the District Legal Services Authority, Suratgarh.



10. The instant petition stands allowed accordingly.
11. Pending application(s) shall also stand disposed of.

(ARUN MONGA),J

1-skm/-

Whether fit for reporting : Yes / No

