

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 815 of 2015

- Lalji Tiwari S/o Late Chottelal Tiwari, Aged About 45 Years R/o Haldi Badi, Dafai, Police Station Chirmiri, District Korea Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through Collector, Korea Chhattisgarh.

---- Respondent

For Petitioner:
For Respondent:

Shri B.P. Sharma, Advocate
Shri Prafulla Bharat, Addl. AG

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

03/12/2015

With the consent of the parties the matter is taken up for final hearing out of turn.

2. This revision is directed against the order dated 24.8.2015 passed by Special Judge, Korea in Special Sessions Trial No. 4/2015 rejecting the application of the petitioner filed under Section 167(2) of the Code of Criminal Procedure for releasing him on bail.

3. Facts of the case in brief are that the applicant is the owner of a grocery shop situated at Sadak Dafai, Haldi Badi, Chirmiri. On 3.6.2015 he was arrested in connection with Crime No. 172/2015 for commission of the alleged offence punishable under Sections 17, 18(c), 27(B) and 15 of the Drug and Cosmetic Act 1940 read with Sections 275, 276 IPC and Section 22 of the Narcotic Drug and

Psychotropic Substance Act 1985 (“NDPS Act” for short). It is alleged that from the possession of the petitioner 115 bottles of Corax Syrup, 14 bottles of ultrex syrup, two bottles of Eskuf syrup, Sipla RC syrup, 52 packets of spasma proxyvon plus capsules (containing total 7488 capsules) were seized. Vide report of the State Drug Examination Laboratory dated 5.10.2015, it was found that all 115 bottles of Corax Syrup contained total quantity of 23 gram Codeine Phosphate.

4. As the *challan* was not filed within a period of 60 days, on 12.8.2015 the petitioner filed an application under Section 167 (2) of the Code of Criminal Procedure for releasing him on bail. However, by the impugned order dated 24.8.2015 the said application was rejected by the Court below mainly on the ground that the further report of the Drug Examiner could not be received and there was possibility of increase of quantity of narcotic substance reaching the commercial quantity for which a different period for filing the *challan* has been prescribed as 120 days.

5. On 18.11.2015 this Court had directed the State counsel to file an affidavit stating that but for the Corax Syrup which was sent for chemical examination, no other article seized from the possession of the petitioner was sent for calling the report of chemical examiner, and in compliance to that order the State counsel submits that he has filed the affidavit of Investigating Officer clearly stating that no other seized article has been sent for further chemical examination mainly because the drug examiner had already given the report to the effect that in the seized capsules no narcotic substance has been found.

6. Counsel for the petitioner submits that once the quantity of seized contraband is below commercial quantity, the *challan* was required to be filed within 60 days and as the same was not filed on the date when the petitioner filed the application under Section 167(2) of the Code of Criminal Procedure, he is entitled for being released on bail.

7. State counsel does not dispute the factual and legal aspects of the case. He however submits that as the petitioner has past criminal record where at least five cases under the Excise Act were registered against him and therefore if he is going to be released on bail, some stringent conditions may be imposed on him.

8. Thus after hearing counsel for the parties and going through the documents annexed with the petition, this Court is of the opinion that the petitioner is entitled for release on bail. Accordingly, the order impugned dated 24.8.2015 passed by Special Judge, Korea in Special Sessions Trial No. 4/2015, is set aside and the petitioner is directed to be released on bail on his furnishing a bond in the sum of Rs. 50,000/- with two sureties of the like sum to the satisfaction of the concerned Court.

9. It is made clear that if the applicant is reported to indulge himself in any office of like nature, the State authorities would have the liberty to file an application for cancellation of bail granted to him.

10. Revision thus allowed.

Sd/-

(Pritinker Diwaker)

Judge