

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 256 of 2017**

- Sheikh Aslam S/o A.M. Sheikh Aged About 32 Years R/o Bhartiya Nagar, Police Station Civil Line, Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Torwa, District Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	: Shri Shailendra Dubey, Advocate
For Respondent/State	: Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****19.4.2017**

1. Heard the matter finally.
2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with crime No.343/2016 registered at Police Station Torwa, Distt. Bilaspur (CG) for the offence punishable under Section 20 (b) (ii) B of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short the NDPS Act).

3. Case of the prosecution, in brief, is that from the joint possession of the present applicant and co-accused 9 kg 500 gm Ganja has been seized by the Police. The applicant and the co-accused Sheikh Shahajada Hussain have been arrested on 15.11.2016. Charge sheet has been filed before the Special Judge, NDPS Act, Bilaspur which is pending as Special NDPS Case No. 610/2016 along with one quintal electric wire.

4. Learned counsel for the applicant submits that the applicant was driving vehicle No. CG 04 HD 4380. As per allegations, 5 packets of Ganja were seized, kept near the applicant while driving the vehicle and 5 packets were seized, kept with the co-accused who was sitting on the back seat of the vehicle along with one quintal electric wire. Police have also seized Rs.1900/- cash from the co-accused Sheikh Shahajada Hussain. He further submits that as per procedural part of the charge sheet all the 10 packets of Ganja were seized from the joint possession of both the accused persons which are homogenized and out of the entire Ganja 2 samples of 100, 100 gms each were taken and the remaining Ganja was sealed along with sample packets separately. As per Talashi Panchanama prepared by the Investigating Officer, 5 packets Ganja kept with the applicant sitting on the driver seat and 5 packets Ganja was seized from the

co-accused sitting on the back seat along with one quintal electric wire. This fact is recorded in the Talashi Panchanama.

5. Learned counsel submits that there was violation of Standing Instruction No. 1/88 as the Police had mixed the entire Ganja and thereafter taken the sample, with this, there is possibility that the entire packets were not the objectionable substance Ganja. He placed reliance on **2009 Cr. L.R.(SC) 590, Union of India Vs. Bal Mukund & Ors.** wherein the Apex Court while deciding Cr. Appeal pending in relation to the alleged seizure of opium referred the said Standing Instruction No. 1/88 and held that the judgment of acquittal has been passed by the High Court of Madhya Pradesh, Indore Bench on the basis of violation of Standing Instruction No.1/88 and on may other counts. The Apex Court has not found it appropriate to interfere with the judgment of acquittal. He submits that Division Bench of this Court while hearing the Cr. Appeal No. 462/2009 (Kripasindhu Sahu Vs. State of Chhattisgarh) and Cr. Appeal No. 540/2009(Krishna Sahu Vs. State of Chhattisgarh) dated 28.4.2014 held that as the entire objectionable substance is homogenized and samples were taken from the said content, it would be difficult to hold whether the cannabis was kept in all the bags or in one or two bags.

6. Learned counsel would submit that may be for the sake of argument, there was Ganja seized from the applicant in one

packet only, this possibility cannot be ruled out that the quantity of Ganja so seized may be less than one kg and with this, the matter was triable by Judicial Magistrate First Class, therefore, the applicant may be granted bail in the matter.

7. On the other hand, learned counsel for the State opposes the bail application.

8. I have heard the counsel appearing for the parties and perused the material.

9. At the time of arguments, the said Standing Instruction No.1/88 is not produced and except for the material in Union of India (supra). In absence of presentation of the entire Standing Instruction, this Court has to take reliance as in para 10 (e) and with this, I cannot hold what about the other provisions of Standing Instruction No.1/88. This court is not hearing the arguments on Cr. Appeal.

10. This court has to appreciate the entire material collected against the present applicant for consideration of bail.

11. Merely, 5 packets were found near the present applicant who was in the driving seat and 5 packets were found near the co-accused who was sitting on the back seat, it cannot be said that both the applicants prima facie were in possession of 5 packets only. The Investigating Officer seized the entire material from the joint possession of both of the accused. The effect of not taken

sample from each and every packet of Ganja recovered may be subject matter of merits of the case. Prima facie so far as the evidence collected and surfaced, it appears that 9 kg and 500 gm objectionable substance cannabis/ganja was seized from the joint conscious possession of the applicant and co-accused.

12. On due consideration, I am not inclined to grant bail to the present applicant. Consequently, the bail application filed under Section 439 of the Cr.P.C. is dismissed.

Certified copy as per rules.

**Sd/
(Chandra Bhushan Bajpai)
JUDGE**