

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1870 of 2017

1. Pritpal Singh S/o Devkumar, aged about 47 years, R/o Village Ratanpur, Gorsidand, Police Station and Tahsil Khadgawa, District Korea (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh, Through: Station House Officer, Police of Police Station Khadgawa, District - Korea (C.G.)

---- Non-applicant

For Applicant – Shri Anil Gulati, Advocate.

For Non-applicant/State – Shri Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

03-04-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested by the police of P.S. Khadgawa, District Korea, C.G. in connection with Crime No.04/2017 for the offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') for illicit possession of Ganja of 1 Kg. and 100 grams just 100 grams above than the small quantity as per Section 20(b)(ii)(A) of the NDPS Act. The charge sheet has been filed before the Special Judge under the NDPS Act, Baikunthpur, District Korea, C.G. which is registered as Special Sessions Trial No.3/2017. The applicant is the first offender, permanent resident of P.S. Khadgawa, Distt. Korea. He is never involved in any of the similar offences. This is the first bail application. He is in jail since 04-01-2017 till date. He will cooperate with the trial, not abscond and appear as and when directed. Therefore, he may be granted bail.
3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant though fairly submitted that there is nothing to show any earlier criminal antecedent of the applicant for his

involvement in the similar offences.

4. Perused the matter.

5. On due consideration, the applicant found in illicit possession of Ganja which is 100 grams above from the smaller quantity and as he is never involved in any of the similar offences, I am inclined to grant him an opportunity so that he may live in the society without further committing any similar offence.

6. Consequently, the instant MCRC is hereby allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.40,000/- with one solvent surety of the like sum to the satisfaction of the Special Judge under the NDPS Act Baikunthpur, C.G. for his appearance before the said trial Court as and when directed till trial.

7. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; and (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

8. On perusal of the order sheet dated 01-03-2017, it appears that the application of grant of bail under Section 439 of the Cr.P.C. has been disposed of under the seal and signature of the Sessions Judge, Korea, Baikunthpur, C.G. There is no any mention of this fact that the said Sessions Judge decided the said bail application either under the authority of Special Judge under the NDPS Act or under the authority of Sessions Judge in the absence of Special Judge under the NDPS Act Korea, Baikunthpur. Also there is mentioning of nomenclature of the matter as Special Sessions Case No.3/17. From perusal

of the provisions of law as in Section 36 of the NDPS Act and Section 36A of the NDPS Act, it appears that though the Judge qualified to be appointed for taking cognizance under the NDPS Act shall be a Sessions Judge or Additional Sessions Judge, but when any Sessions Judge/Additional Sessions Judge duly appointed under the provisions of Section 36 of the NDPS Act the case as he tries shall come under the ambit of triable jurisdiction of Special Courts. The offences triable by the Special Court cannot be Special Sessions Trial except they have to be registered as Special Criminal Cases (under NDPS Act). It appears that the concerned registration as Special Sessions Case is not as per provisions of law, also it is felt during hearing that judges of subordinate courts are not registering the matter in accordance with law, also not mentioning their official position in the matter as per provisions of law. Earlier also this Court passed an order for the same. Once again, Registrar General is directed to examine the matter; if not classified, prepare a list of cases, their methodology of registration under the various act and correct nomenclature of any presiding officer hearing any special matter so that there should be a singular methodology and working for the nomenclature of any specific case and also the nomenclature of presiding officers in entire State for the same jurisdiction be mentioned in accordance with law. After said exercise and due approval, if required deemed, Registrar General shall issue a circular widely covering all the matter aforementioned for the needful under intimation.

9. The MCRC disposed of.

10. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE