

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2413 of 2017

- Ramesh Harpal S/o Shyam Harpal, Aged About 22 Years, R/o Walipati, Police Station Kegaon, District Kalahandi, Oodisha. Present R/o Huddco LIG / 106 Bhilai Nagar District Durg, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Mohan Nagar, District Durg, Chhattisgarh.

---- Non-applicant

and

MCRC No. 2590 of 2017

- Bharat Tiwari S/o Ramlal Tiwari, Aged About 58 Years, R/o Sadarnaka Green Chowk, Police Station Mohan Nagar, Nagar District- Durg, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Mohan Nagar District- Durg, Chhattisgarh.(As Per Charge Sheet)

---- Non-applicant

For Applicants – Shri S.K.Agrawal, Advocate.

For Non-applicant/State – Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

29-06-2017

1. As both the MCRC are arise out of the same crime number and incident, both are being disposed of by this common order.
2. Heard the matter finally.
3. Learned counsel for the applicants would submit that the applicants held arrested in connection with Crime No.60/2017 on 03-02-2017 by P.S. Mohan Nagar District Durg, C.G. for the offence under Section 20(b)(ii)(B), 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'). After investigation police had filed charge sheet which is pending before the Special Judge under the NDPS Act as Special NDPS Case No.07/2017. Learned counsel for the applicants would submit that allegation against

Ramesh Harpal is that Rs.15,000/- in connection with alleged sale receipt of ganja has been seized, with this, there is no material against this applicant and as alleged, from Bharat Tiwari 7.900 Kg. ganja has been seized, but the place where the ganja has been seized belongs to applicant Bharat Tiwari is not proved by the prosecution. For the sake of argument, if the said house was of applicant Bharat Tiwari, then all the occupants of the said house may be made accused in the matter. Learned counsel for the applicants draws attention of this Court in the matter of **Om Prakash @ Baba vs State of Rajasthan**, (2009 10 SCC 632) wherein Hon'ble the Apex Court acquitted the appellant on the basis of a few grounds including that the alleged house was not owned and in possession of the appellant. Hon'ble the Apex Court had acquitted the appellant. Learned counsel for the applicants further draws attention of this Court in the matter of **Satyabhan Singh vs State Of Madhya Pradesh**, [2007 Law Suit MP 1468, 2007(3) MPHT 508] wherein the puisne Judge of M.P. High Court on account of many grounds also held that if it is not established that the appellant is the land owner of the field from which ganja was recovered and father of the appellant was not made accused by the prosecution, the appellant entitled for acquittal. Learned counsel would further submit that on the basis of strength of said cited case law both the applicants may be enlarged on bail.

4. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicants and would submit that prior to the seizure of Rs.15000/- from applicant Ramesh Harpal police was not knowing his address and other facts, it was surfaced as information under Section 27 of the Evidence Act when the memorandum of applicant Bharat Tiwari was recorded. Bharat Tiwari is a person from whose possession 7.900 Kg. ganja has been recovered. In the present matter Section 54 of the NDPS Act regarding presumption is also applicable and as applicant Ramesh Harpal resident of Orissa presently residing in Huddco colony was engaged in trading

of ganja and applicant Bharat Tiwari was in illegal possession of the said ganja, both the MCRC may be dismissed.

5. Perused the entire material.

6. From perusal of the entire material collected by the prosecution surfaced in the charge sheet and its legal implication, I am not inclined to grant bail to both the applicants. Consequently, both the MCRC are hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE