

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.2773 of 2017**

- Smt. Premmani Khora W/o Shri Ramesh Khora, Aged About 33 Years R/o Kotpad, Police Station Kotpad, District- Korakot , Orissa.

---- Applicant

Versus

- State Of Chhattisgarh Through: Station House Officer Police Of Police Station- Dondi, District- Balod, Chhattisgarh.

---- Respondent

For Applicant	: Shri Anil Gulati, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****20.6.2017**

Heard the matter finally.

2. This is the 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.13/2017 registered in Police Station Dondi, Distt. Balod for the offence punishable under 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act).

3. Learned counsel for the applicant submits that the applicant has been arrested on 19.3.2017, after investigation, concerned police has filed charge sheet against the applicant, which is pending as Special Criminal Case No.42/17 before Special Judge, under the NDPS Act. As per the allegation, from the possession of present applicant 1.027 Kg ganja has been seized which is just 29 grams above the small quantity. The applicant is a woman, aged about 33

years, she is the resident of neighbouring state Orissa, she may be given an opportunity to remain on bail, as possibility may not be ruled out regarding weight of the ganja as taken because ganja so seized is just 27 grams above the small quantity. The applicant is in jail, she will not commit any offence in future. Hence, she may be granted bail.

4. Per contra, learned counsel for the State opposes the bail application and would submit that present applicant and co-accused Murlidhar Naik were sitting on the spot nearby and both were carrying ganja and in the dehati nalishi and other papers, name of both the applicants were mentioned though during investigation police has seized of 1.027 kg ganja from present applicant and 3.722 kg ganja from co-accused which goes to show that the entire ganja was in the joint and conscious possession of both the applicants, hence, it cannot be held that the applicant was in possession of 1.027 kg ganja only. She is also responsible for the ganja seized from the co-accused. Hence, instant bail application may be dismissed looking to the total quantity of ganja seized from both the accused.

5. Perused the entire material.

6. The applicant is a woman, she is in custody for three months, though she is the resident of Kotpad, Distt. Korakot, Orissa, a neighbouring State and is near from District Balod, but during investigation the police has not collected any criminal antecedent of the applicant, which goes to show that prima facie there is no criminal antecedent reported against her. From perusal of the

seizure memo, it appears that there are two seizure memos and in that, it appears that the police has seized ganja separately from both the accused though in dehati nalishi and other papers i.e. notice given to both the applicants regarding their consent under Section 50 of the Act and other procedural part name of the both the accused persons surfaced together. But this fact alone cannot lead prima facie consideration that the entire ganja was seized jointly from both the accused persons and may not be considered as total quantity of ganja seizure from any one of them. With this, it appears that prima facie two accused were standing at the same spot and there is no any material of substantiate that they had any common intention or any act in furtherance to commit any offence together, with this in the considered view of this Court, there is no element in the charge sheet to demonstrate that the entire quantity of ganja so seized from both the accused may be considered as ganja seized from joint possession of both the accused. With this for the purpose of bail application this Court is of the considered view that the applicant was in illegal possession of 1.027 kg ganja and she was coincidentally standing at the same place where other co-accused was standing. But she cannot be associated with the act of the co-accused as the ganja seized from the applicant is only 27 grams above the small quantity, hence, I am inclined to grant one opportunity to the applicant.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.50,000/- with two

solvent sureties of Rs.25,000/- to the concerned Special Judge under the NDPS Act, Distt. Balod for her appearance before the said Court as and when directed.

9. 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 the above, the Court below may proceed further under the provisions of law, under intimation.

10. It is further directed that till the conclusion of the trial, present applicant shall mark her appearance before the Station House Officer/IO, Police Station Dondi, Distt. Balod on **First and Third Monday of every month at 11.00 am.**

It is further made clear that if the applicant without any cogent and proper reason does not appear before the Police of Dondi, Distt, Balod as directed, the concerned police may inform the trial Court for the act and if her non appearance found to be without any proper and cogent reason, the instant order granting bail to the applicant shall automatically be cancelled by the trial Court without further reference to the Bench, under intimation.

11. Registrar (Judl.) is further directed to send a copy of the order to the concerned Special Judge under the NDPS Act, Distt. Balod and also to provide a copy of the order to the respondent/State for placing it with the case diary to be returned to the concerned police for compliance and information.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE