

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3295 of 2017

- Santosh Kumar Gurjar S/o Dharam Raj, Aged About 32 Years, R/o Village- Pasa, Police Station Chandani, Tehsil- Odagi, Revenue & Civil District- Surajpur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer Chandani, Tehsil- Odagi, District- Surajpur, Chhattisgarh.

---- Non-applicant

For Applicant – Shri Surfaraj Khan, Advocate.

For Non-applicant/State – Shri Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

24-07-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.22/2017 on 07-4-2017 by P.S. Chandani, District Surajpur, C.G. for the offence under Section 34(2) of the C.G. Excise Act, 1915 (in short 'the Act, 1915'). Learned counsel for the applicant would further submit that despite provision attracted in the matter of Section 167(2) first proviso (a)(ii) of the Cr.P.C. as after expiry of 60 days from the date of arrest and the charge sheet is not filed, no Magistrate shall authorize the detention of the accused person in custody; charge sheet is not yet filed and the applicant is also not given right under the law to remain in bail as the applicant was prepared to furnish the bail, if any, directed by the concerned Court. Though, learned counsel is not in a position to place the documents to corroborate the above facts, but, his oral submission is recorded as Officer of the Court. Learned counsel for the applicant would further submit that as per the allegation, the applicant was in illegal custody of 8.410 bulk liter liquor. He is first offender. He may be granted bail, though on the same date of the incident, the applicant was in illegal custody of 200 grams ganja for which

concerned police had registered Crime No.21/2017 under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), but as per provisions of law being the quantity small the said matter is triable by JMFC not by Special Court under the NDPS Act. The applicant is in custody since long. He will not commit any offence in future. He may be granted bail during trial.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant on the basis of the quantity of liquor so seized and also submitted that 200 grams ganja seized from the applicant, it goes to show his criminal antecedent.

4. Perused the entire material.

5. As the applicant is in custody since 3 months and 17 days till date, as per the submission charge sheet is not yet filed, as per submission aforementioned, under provision of Section 167(2) of the Cr.P.C. the right to be released on bail is not granted to the applicant, though 200 grams ganja is also seized from the applicant as aforementioned, but the said quantity is below the small quantity, triable by the JMFC and other provisions as contained in the First Schedule Part II - Classification of Offences against other Laws as provided in the Cr.P.C. and as submitted after the expiry of 60 days the applicant was not given opportunity to remain in bail, upon consideration of the entire facts, I am inclined to grant bail to the applicant. 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.30,000/- with one solvent surety of the like sum to the satisfaction of the Judicial Magistrate First Class Surajpur, C.G. for his appearance before the said Court as and when directed till trial.

6. 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.

7. Though there is no any documentary evidence filed on behalf of the applicant, but looking to the submission made by learned counsel for the applicant, copy of this order be sent to the Registrar General of this High Court. He is directed to verify whether the contention as submitted by the learned counsel for the applicant under the provision of Section 167(2) of the Cr.P.C. is correct and whether despite legal right the applicant ever denied to be released on bail under the provision of Section 167(2) of the Cr.P.C. as attracted in the matter. If so, the Registrar General is directed to after examining the above may proceed for any appropriate proceedings against the concerned remand Court after appropriate permission from the authorities as required.

8. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge