

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4859 of 2017**

- Arjun Sori S/o Mukund Sori, Aged About 35 Years R/o Village Salhebedi, Police Station Chandahandi, District Navrangpur, (Odisha).

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Devbhog, Civil & Revenue District Gariyaband (Chhattisgarh).

---- Respondent

For Applicant	: Shri JK Gupta, Advocate
For Respondent/State	: Shri Sumit Jhawar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****21.8.2017**

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.265/2016 registered in Police Station Devbhog, Distt. Gariyaband 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. Learned counsel for the applicant submits that the applicant has been arrested on 30.11.2016, after investigation, police has filed charge sheet on 31.12.2016 before the Special Judge under the NDPS Act, Raipur which is pending as Special Sessions Trial No.13/2017. Learned counsel for the applicant would submit that

the applicant is aged about 35 years, first offender, as per allegation 5.500 kg ganja has been seized from his possession, he is innocent, he has been falsely implicated, he is the resident of District Navrangpur (Orissa), the trial may take some time for its conclusion, hence, he may be granted bail

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that looking to the quantity of ganja so seized from the applicant, instant application for bail may be dismissed.

5. Perused the entire material.

6. On due consideration of the facts surfaced in the matter as 5.500 kg ganja has been seized from the applicant who is not the resident of this State and has not shown any proper cause for his presence on the spot and considering the entire facts, I am not inclined to grant bail to the applicant.

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

8. On perusal of the certified copy of the order sheet dated 10.01.2017 and other dates, it appears that the matter has been directly presented before the trial Court on 10.01.2017 and the Court has taken cognizance thereafter framed the charges and fixed the matter for recording the evidence, registered the matter as Session Trial No.13/17. For relevance Section 36A(1) (d) of the NDPS Act is reproduced as under :-

“36A. Offences triable by Special Courts.-(1)
Notwithstanding anything contained in the Code of
Criminal Procedure, 1973 -

XXXX	XXXX	XXXX
XXXX	XXXX	XXXX

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial”

9. A perusal of the provisions and order sheet dated 10.01.2017, charge sheet has been directly filed before the trial Judge, the matter was not committed by the Judicial Magistrate, under Section 209 CrPC and as per the provisions, the Special Court is constituted to decide the matter under the NDPS Act 1985 as Special Court and not as the Sessions Judge or session Court. Though the qualification to be appointed as Judge to Special Court is of Sessions Judge or the Additional Sessions Judge, but that is a qualification and since the judge is appointed to preside over the Special Court, the designation of the said judge shall be Special Judge under the NDPS Act, 1985 and as per the provisions of Section 36A(1)(d) of the NDPS Act, the Special Court may take cognizance of the offence without there being any committal of the matter for trial. With this, as the Court is Special Court, Judge is the Special Judge under the NDPS Act, 1985, the matter cannot be under any authority of law registered as Special Sessions Trial because either the court is the Court of session not the matter is sessions trial as cognizance is taken by

the Special Court by the Special judge appointed under the NDPS Act. With this the trial Court is directed to correct the above error and further directed to register the matter under the heading of Special Criminal Case under NDPS Act and further directed not to repeat the above error of law for recording the matter in future.

10. Registrar General is further directed to circulate the copy of this order to the judges of the State working as Special Judges under the NDPS Act to register the matter in accordance with law in future and also correct any error likewise, if exist.

11. A copy of the order be sent to the trial Judge for compliance and further guidance.

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