

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4754 of 2017**

- Virendra Patel @ Bhim S/o Shri Gulab Patel Aged About 30 Years By Caste - Kurmi, R/o Gaddha Dafaie, Ward No. 03, Tahsil & Police Station Poudi, District- Korea, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station Poudi, District- Koriya, Baikunthpur- Koriya, Chhattisgarh.

---- Respondent

For Applicant	: Shri JA Lohani, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****18.8.2017**

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.10/2017 registered in Police Station Poudi, Distt. Korea Baikunthpur for the offence punishable under Section 22(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 18.01.2017, after investigation police has filed charge sheet which is presently pending before Special Judge under the NDPS Act as Special Session Trial No.4/17. As per the allegation, 7 gm and 110 ml gm heroine i.e.

diacetylmorphine has been seized from the possession of the applicant. He is in custody since long, as the trial may take some time for its conclusion, he may be enlarged on bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that as per the FSL report, presence of diacetylmorphine was confirmed.

5. Perused the entire material.

6. On due consideration as the quantity of narcotic drugs seized is higher than the small quantity but below the commercial quantity, 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. A perusal of the order passed by the Special Judge Under the NDPS Act, Korba dated 07.4.17, it appears that number of the matter is mentioned as Special session trial No.4/17. As per Section 36 of the NDPS Act, a special court is duly constituted and as per the settled law, the charge sheet is directed filed before Special Judge without committing the matter under the relevant provisions of Section 209 of CrPC. With this the trial Judges are not the Special Sessions Judges and the matter cannot be registered as Special session trial as the said was never committed by the judicial magistrate. With this the matter shall be special criminal case under the NDPS Act. The trial Court is directed to correct the nomenclature of the registration of

the matter and further directed not to repeat the aforementioned mistake in future by registering the matter under the head which is not as per law.

9. A copy of this order be sent to the trial Court for compliance and future guidance .

Sd/-

(Chandra Bhushan Bajpai)

JUDGE