

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8673 of 2016

Buland Akhtar, S/o. Late Abid Hussain, Aged About 37 Years, R/o. Rahmat Chowk Line, Chatra, Police Station- Sadar Chatra, District- Chatra, Jharkhand.

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station- Kabir Nagar, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Applicant : Mrs. Fouzia Mirza, Advocate

For Respondent : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

ORDER

17/01/2017

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested in connection with Crime No.86/2016 registered at Police Station- Kabir Nagar, District Raipur (C.G.) for the offence punishable under Section 18 of Narcotic Drugs & Psychotropic Substances Act.
2. According to the case of the prosecution, the Police Station- Kabir Nagar, Raipur, has arrested one Bhavani Singh and Mukesh Prasad in Crime No.84 of 2016. During interrogation, it was discovered that the applicant and the other co-accused were involved in trafficking and it was disclosed that they could be coming by a Wagon R Car bearing No. D.L.3C B.L.1503 near H.P. Gas Godown along-with Opium. Thereafter, on such information, the raid was conducted and the vehicle which was driven by Mohd. Imran and the present applicant who was sitting, 1.5 Kg

Opium was recovered from the present applicant and from other co-accused 13 Kg Opium was recovered.

3. Learned counsel for the applicant would submit that there is a serious breach of Section 42 of Narcotic Drugs & Psychotropic Substances Act (*for short "NDPS Act"*) as the evidence would show that information was not given according to Section 42(2) of the NDPS Act. It is further submitted that only on the statement of the other co-accused, the applicant has been falsely implicated and no seizure was actually made as otherwise there would have been a compliance of Section 42(2) of NDPS Act and the information would have supplied to the higher officials. The reliance was placed in case of ***Sarija Banu Alias Janarthani Alias Janani & Another v. State Through Inspector of Police***¹ and it is submitted that compliance of Section 42 is mandatory and while considering the bail, the same cannot be ignored and therefore the information which was alleged to have been given to the SDOP & CSP do not bear even the seal would show that compliance of Section 42(2) of NDPS Act is not carried out, therefore, the applicant is entitled for bail.
4. Per contra, learned State counsel opposes the prayer for grant of bail.
5. Perused the case diary and the documents. The case diary also contains the Rojnamchasanha of 28.09.2016 wherein it is recorded that the City Police Superintendent, Azad Chowk, was out of Station and could not come and therefore CSP who was In-charge of the Police Station was informed by mobile phone as otherwise the applicant/accused would have fled away.

¹ (2004) 12 SCC 266

6. The Constitution Bench of the Supreme Court in case of ***Karnail Singh v. State of Haryana***² have held that when it is not practicable or feasible to take down in writing, the information given either by mobile phone or other means shall be held to be compliance of Section 42(2) of the NDPS Act. In this case, the Rojnamchasanha shows that compliance was made as the information was supplied. Consequently, this fact being the matter of evidence, at this stage, the same cannot be annulled. Therefore, I am not inclined to release the applicant on bail.
7. Accordingly, the bail application filed under Section 439 of Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok