NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No. 442 of 2018

1. Wasim Khan S/o Mr. Mohammed Naseeb, Aged About 23 Years R/o Mirzapur, P.S. Nijay Nagar Tehsil And District Gaziytabad, Uttarpradesh, Uttar Pradesh.
2. Irfan S/o Mr. Iqbal, Aged About 25 Years R/o Mirzapur, P.S. Vijay Nagr, Tehsil And District Gaziyabad, U.P., District : Ghaziabad, Uttar Pradesh.

---- Applicants

Versus

State Of Chhattisgarh Through The Police Sttiopn Dabhra, Bastar, Chhattisgarh.

---- Respondent

For the Applicants : Shri Raza Ali, Advocate.
For the Respondent/State : Ms. Smita Ghai, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

22.03.2018

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Crime No.49 of 2017, registered at Police Station – Darbha, Bastar, District – Bastar, Chhattisgarh for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Learned counsel for the applicants submits that the applicants are in jail since 11.7.2017 and have been falsely implicated in this case. The applicants had been in District Bastar for the purpose of purchasing the local

artifacts. Seizure of contraband has been made from the vehicle in which the applicants were travelling, whereas the applicants are not the owner of the said vehicle. It is also submitted that the procedure which is mandatory to be followed under the NDPS Act, has not been followed which makes the case doubtful. The accused persons in similar cases have been granted bail by this Court in the case of **Awadesh Kumar vs. State of Chhattisgarh** reported in **(2006) 3 CGLJ 322,** considering on the discrepancy in the procedure adopted during search and seizure in a matter of commercial quantity, bail has been granted by the Single Bench of High Court of Tripura in the case of commercial quantity of contraband in **Khalek Miah and Others vs. State of Tripura** reported in **2016 LawSuit (TR) 49** following the judgment of Hon'ble Supreme Court in the case of **Sarija Banu @ Janarthani @ Janani and Another vs. State through Inspector of Police** reported in **2004(12) SCC 266.** Hence, it is prayed that the applicants be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the submissions made by the applicants in defence are to be proved before the trial Court. According to the present case, commercial quantity of ganja has been seized and all the discrepancies shall be explained by the Investigation Officer before the trial Court. Hence, it is prayed that the applicants are not entitled for grant of bail.

4. Heard counsel for both the parties and perused the case diary.

5. On 11.7.2017, when the applicants were travelling alongwith two others in a Car bearing registration No. H.R.-26Z-6620, they were intercepted by the police personnel of P.S. Darbha and searched, and total 35 kg of ganja (narcotic substance) was seized from the applicants and two others and the seizure has been made. Hence, this case.

6. Considered the entire material present in the case-diary. With regard to the case law that has been cited by the applicants, in that the concerned Courts have decided the case according to the material present before them and grant of bail is totally a discretionary matter, which cannot be based on any other case law not decided on principle. Hence, I am of this view that the applicants in both the cases does not deserve to be enlarged on bail.

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

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi