

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. CRIMINAL CASE NO. 3460 OF 2018

Firu Yadav S/o Anuj Yadav, aged about 23 years, R/o Dilwapara, Chorbhatthi, Ward No.15, Patharia, District Mungeli (CG).

... Applicant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Patharia, Distt. Mungeli (CG).

... Respondent

For Applicant	:	Ms. Sofia Khan, Advocate.
For Respondent-State	:	Shri Mazid Ali, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/07/2018

1. This is the first bail application seeking for grant of bail to the Applicant who is in jail since 22.02.2018 in connection with Crime No. 98 of 2018 registered at Police Station Patharia, Distt. Mungeli, for the offence punishable under Section 20(B) of the NDPS Act.
2. As per prosecution case, the applicant on the date of incident was found to be in possession of 20.430 KG of Ganja. The applicant is said to have taking the said contraband in a Maruti Van (Omni) which was registered in the name of father of the present applicant.
3. Learned Counsel for the applicant submits that it is a case where the present applicant has been falsely implicated in the case. That the entire prosecution case itself is surrounded with large number of contradictions and omissions. The procedure adopted by the prosecution in the course of collection, seizure and weighing of the contraband also has not been properly adhered to. Referring to charge sheet it is submitted that the dates mentioned in the case diary would itself show that there is discrepancy so far as date and time in respect of proceeding drawn by the investigating agency is

concerned. Likewise, it was also the contention of the applicant that the entire prosecution case stands collapsed only on the ground that the sample of the contraband seized has not been sealed. Neither is there any Panchnama prepared while sealing the contraband. There is also dispute so far as the actual weight of contraband seized inasmuch in the charge sheet the contraband seized is shown as 20.430 KG whereas before the executive magistrate when the contraband was weighted it showed to be 19.750 KG. Thus, for all these discrepancies, omissions and contradictions the applicant be released on bail.

4. The State counsel opposing the application submits that so far as discrepancy in respect of date is concerned, the same is a clerical error on account of fact that the investigation started on the intervening night of 21-22 February, 2018 and therefore discrepancy arose and at one place in a subsequent proceeding the previous day's date has been reflected. So far as difference in weight is concerned, there is no huge difference in the weight which has been reflected in the case diary and the weight reflected at the time of weighting the contraband before the executive magistrate, and therefore the same cannot be said to be a grave error.
5. The State counsel fairly admits that seal Panchnama and sealing of the sample collected from the contraband seized is not reflected in the case diary. However, he submits that merely because the samples have not been sealed by itself should not give an advantageous position to the applicant for the reason that contraband was seized from the exclusive possession of the appellant who was driving the

vehicle and from where the contraband was recovered, and thus prayed for rejection of the bail application.

6. Having heard the contentions on either side and on perusal of records, this court finds that there appears to be a discrepancy so far as weighment of the contraband is concerned. According to prosecution, at the time of seizure it was 20.430 KG, however, before the executive magistrate the weight of contraband is reflected as 19.750 KG. The difference as such is not so simple which can be ignored. The prosecution has not been able to give proper explanation as to the discrepancy so far as weight of contraband is concerned. Likewise, there does not appear any explanation so far as the samples not being sealed and non availability of seal Panchanama is concerned. If the samples collected from the spot itself is not sealed and that there is no seal Panchnama prepared by the prosecution, the entire prosecution case itself would be substantially prejudiced on this ground alone. All these discrepancies gives a great element of doubt on the prosecution story. Thus, this Court is of the opinion that the present is a fit case where the Applicant can be enlarged on bail.
7. Accordingly, the application for grant of bail is allowed. It is directed that the Applicant shall be released on bail on his furnishing a personal bond for a sum of Rs.20,000/- with one surety of the like sum to the satisfaction of the concerned Trial Court for his appearance as and when directed.

Sd/-
(P. Sam Koshy)
Judge