

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case No. 5476 of 2018**

Abhilash Rawat S/o Karan Singh Rawat, aged about 25 years, R/o
Sindhi Colony, Gali No.05, Vidisha, PS Kotwali, Vidisha, District
Vidisha, MP

---- Applicant**Versus**

State of Chhattisgarh through Police Station Keshkal, District
Kondagaon, CG

---- Respondent

For Applicant	:	Shri Shobhit Koshta, Advocate
For Respondent/State	:	Shri Ratan Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/09/2018**

This is the first application filed u/s 439 of Cr.P.C. for grant of bail to the applicant who is in jail since 19.06.2017 in connection with Crime No. 69/2017 registered at Police Station- Keshkal, District Kondagaon (CG) for the offence punishable under Sections 20B (ii) (c) of NDPS Act.

2. The case of the prosecution is that on 19.06.2017 the applicant along with other persons were found travelling in a Swift Desire Car bearing registration No. MH/03/F/2268. As per the information provided by the informant, the said vehicle was being driven by the applicant which was intercepted and on search, 30 packets of Ganja weighing 50.120 Kg. were seized.

3. Counsel for the applicant submits that in the light of the recent

larger Bench decision of the Hon'ble Supreme Court in the case of Mohan Lal Vs. the State of Punjab in Criminal Appeal No. 1880/2011 decided on 16.08.2018 the entire prosecution case itself stands vitiated for the reason that as per the material available in the case diary, the informant and the Investigating officer are the same person and therefore, the investigation cannot be said to be a fair investigation. He submits that the Supreme Court in the said judgment has categorically held that the informant and the Investigating Officer must not be the same person which in the instant case is the same person. On this technical flaw, counsel for the applicant seeks for grant of bail to the applicant. Apart from that, the applicant has already remained in custody for more than 14 months and the material witnesses who have been examined till now have not supported the case of the prosecution and turned hostile.

4. State counsel, however, opposing the bail application submits that considering the quantity of Ganja seized the period of one year which the applicant has remained in custody is not sufficient enough for enlarging him on bail. So far as the judgment of the Supreme Court is concerned, State counsel submits that the applicant has a right to seek remedy from the said judgment by seeking quashment of the proceedings but so far as the grant of bail is concerned, the ratio laid down in the said judgment may not be applied.

5. Having heard the contentions put forth on either side it would be relevant at this juncture to take note of the observation of the larger Bench of the Supreme Court in the case of Mohan Lal (supra) wherein the operative part of the judgment it has been held as under:

“It is therefore held that a fair investigation, which is but

the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person.”

6. From the charge sheet it is reflected that the informant is one Sharad Dubey and it is the same person who has also conducted the investigation.

7. Given the said fact, this Court is of the opinion that it is a case where the investigation in the light of the Supreme Court would fall under the ambit of an unfair/bias investigation. Moreover, this Court also finds that the material witnesses examined till now have also not supported the case of the prosecution and turned hostile. Further the applicant has already remained in custody for a period of 14 months. All these facts prima facie, entitle the applicant for grant of bail.

8. Accordingly, the application for grant of bail is allowed. It is directed that the present Applicant will be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court for his appearance before the said Court as and when directed.

Sd/-
(P. Sam Koshy)
Judge