

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-12-2018****Delivered on 12-12-2018****MCRC No. 6667 of 2018**

1. Sachin Malerao S/o Jems Malerao Aged About 22 Years R/o Dhuliya Road Adarsh Nagar Chalisgaon P.S. Chalisgaon District- Jalgaon MH
2. Amit Sonwani S/o Rohidas Sonwani Aged About 26 Years R/o New Malegaon Road, Chalisgaon P.S. Chalisgaon District- Jalgaon MH
3. Pravin Patil S/o Santosh Patil Aged About 28 Years R/o Derawadi P.S. Chalisgaon District- Jalgaon MH

**---- Applicants****Versus**

State Of Chhattisgarh Through The Police Station Farasgaon,  
District- Kondagaon, CG

**---- Respondent**


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|----------------|---|------------------------------------|
| For Appellant  | : | Shri P.K. Tulsiyan, Adv.           |
| For Respondent | : | Shri Ashok Swarnkar, Panel Lawyer. |

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**Hon'ble Shri Justice Sharad Kumar Gupta****CAV ORDER**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and their no bail application is pending before any other court.
2. The applicants have been arrested in connection with Crime No. 115/2017 registered in police station Farasgaon, Distt. Kondagaon (CG) for offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act').
3. In brief the prosecution story is that on 3-12-2017 Asstt. Sub-Inspector Pitambar Kathar posted at Police Station Farasgaon received an information from informant that 3 persons in a vehicle Maruti Suzuki D'zire bearing registration No. MH 19 CU 2972 are transporting

cannabis and coming from Jagdalpur. He completed some formalities and blocked the way, after about 16 hours, police seized 132.548 kg cannabis from joint possession of applicants.

4. Counsel for the applicants argued that the applicants are innocent and falsely implicated. He further submits that in the case in hand mandatory provisions of Section 42, 57 of NDPS Act have not been complied with, informant and IO is the same person, thus investigation vitiated, recovery memo has been prepared prior to other formalities, both seizure witnesses have turned hostile in trial Court. Thus, the applicants may be released on bail.

5. On the other hand, the State Counsel opposed the bail application.

6. Counsel for the applicants placed reliance on a decision of Hon'ble Supreme Court in **Sarija Banu (A) Janarthani alias Janani and another -v- State through Inspector of Police** [2004 AIR SCW 7488], in which following judicial precedent has been laid down :-

“Serious violation of provision of Section 42, NDPS Act to be considered while considering bail application.”

7. Counsel for the applicants also placed reliance on a decision of Hon'ble Supreme Court in **Gorakh Nath Prasad -v- State of Bihar** [AIR 2018 SC 704], in which following judicial precedent has been laid down :-

“If raiding officer failed to produce seized Ganja or sample drawn before Court, MR number not found on sealed sample, independent witnesses of search and seizure turned hostile, testimony of police officer itself not sufficient to prove seizure, FSL report not confirming either seizure or what was seized was Ganja, prosecution failed to give explanation for non-production of Ganja as exhibit in trial, accused is entitled to benefit of doubt.

8. Counsel for the applicants further also placed reliance on a decision of Hon'ble Supreme Court in **Mohan Lal -v- State of Punjab** [AIR 2018 SC 3853], in which following judicial precedent has been laid down :-

“When informant and investigating officer is same person, investigation is said to be vitiated.

9. Counsel for the applicants also placed reliance on a decision of Division Bench of this Court in **Bholaram and others -v- State of CG** [2018(2) CGLJ 344 (DB)], in which following judicial precedent has been laid down:-

“where there is violation of mandatory provisions of Section 50, and also violation of Section 57 of the NDPS Act, independent seizure witnesses have not supported the case of the prosecution and particularly when the officer who lodged the FIR himself became the investigating officer, it would be unsafe to convict the accused for the commission of offence under NDPS Act.

10. In the case in hand it has been mentioned in Dehati nalishi dated 3-12-2017 that copy of informant information panchnama is sent to SDOP. This fact has also been mentioned in Roznamcha Sanha dated 3-12-2017 in Sr. No. 18 and 20. Thus, this Court prima facie finds that there is no violation of Section 42 of the NDPS Act. Thus, applicants do not get any help from the judicial precedent laid down by Hon'ble Supreme Court in **Sarija Banu** (supra).

11. In the case in hand, recovery panchnma has been prepared on 3-12-2017 at 11.45 am. Prior to it other formalities have been completed. But alleged cannabis was seized on very day at 16.25 pm. Thus at this stage applicants do not get any help from recovery panchnama.

12. In the case in hand, the information was received by Pitambar

Kathar, Asst. Sub Inspector Police Station Farsagaon. He did all the formalities and seized the aforesaid cannabis from applicants. Thereafter Inspector Krishna Patle, Police Station Farasgaon had done investigation, thus, it can not be said prima facie that informant and investigator is the same person. Thus, applicants do not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in **Mohan Lal** (supra).

13. Prima facie, it appears that in the case in hand there is a violation of provisions of Section 57 of the NDPS Act.

14. Judicial Precedents laid down by Hon'ble Supreme Court in **Gorakh Nath** (supra) and **Bholaram** (supra) deal with the cases which are to be disposed of finally. Thus, the applicants do not get any help at this stage from aforesaid judicial precedents.

15. Looking to the facts and circumstances of the case, looking to the allegedly seized huge quantity of cannabis, looking to the seriousness of the alleged offence and also the impact of granting bail on the society, this Court is not inclined to give the benefit of Section 439 of the Cr.P.C. to the applicants on the grounds that, both seizure witnesses have turned hostile in the trial Court, prima facie there is a violation of Section 50 of the NDPS Act. Consequently, the bail application is rejected.

**Sd/-**  
**(Sharad Kumar Gupta)**  
Judge