

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 986 of 2019

- Premanand Bhadra, S/o Vishnu Bhadra, Aged About 35 Years, R/o Satyam Goda, Maha Kali Hardware, Malkangiri , Odisha.

---- Applicant

Versus

1. Directorate of Revenue Intelligence (DRI), Nagpur Regional Unit.
2. State of Chhattisgarh Through Collector, Raipur, Chhattisgarh.

---- Respondents

MCRC No. 1407 of 2019

- Vishnu Bhadra, S/o Kalicharan Bhadra, Aged About 56 Years, R/o Satyamguda, Maakali Hardware, (Wrongly Mentioned As Malkali Hardware in impugned Order) Malkangiri, District- Malkangiri, Orissa.

---- Applicant

Versus

- State of Chhattisgarh Through Directorate of Revenue Intelligence (DRI), Nagpur Regional Unit, 6th Floor, B Wing, CGO Complex, Seminary Hills, Nagpur, 440006, Maharashtra.

---- Respondent

MCRCA No. 793 of 2019

- Sadanand Bhadra, S/o Bishnu Bhadra, Aged About 27 Years, R/o Satyam Goda, Maha Kali Hardware, Malkangiri, Odisha.

---- Applicant

Versus

- Directorate of Revenue Intelligence (DRI) Through Nagpur Regional Unit, 6th Floor, B Wingh, Cgo Complex, Seminary Hills, Nagpur-440006, Maharashtra., District : Nagpur, Maharashtra

---- Respondent

For Applicants : Mr. Raza Ali, Mr. M.L. Saket & Mr. Chakresh Tiwari, Advocates in MCRC No.986/2019.
Mr. Kamal Kishore Patel, Advocate in MCRC No.793/2019.
Mr. Prafull N. Bharat, Advocate in MCRC No.1407/2019.
For Respondent/DRI : Mr. Maneesh Sharma, Advocate with Officers Mr. Nilesh Kadu & Mr. Atul Mahajan.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

12/07/2019

1. Since the above bail applications are similar in nature and arise out of the same chain of incidents, they are being heard and decided together by this common order.
2. Applicant in M.Cr.C(A) No.793/2019 has filed this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.F.No. DRI/ MZU/NRU/INT-87/2018 registered at Police Station-Directorate of Revenue Intelligence (DRI), Nagpur (MS) for the offence punishable under Sections 8(c), 20, 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. Applicants in M.Cr.C. No.986/2019 & 1407/2019 have filed these applications for grant of regular bail to them as they are in custody in connection with Crime No.F. No.DRI/MZU/NRU/INT-87/2018 registered at Police Station-Directorate of Revenue Intelligence (DRI), Nagpur for the offence punishable under Sections 8(c), 20, 28 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
4. So far as applicant–Premanand Bhadra, who is in custody since 2018, is concerned, it is submitted that at the time of seizure of contraband this applicant was not present on the spot and there is no evidence that this applicant has abetted or entered into a criminal conspiracy to commit the offence under the NDPS Act. It is also submitted that

respondent No.1-Directorate of Revenue Intelligence, does not have jurisdiction to investigate and prosecute this case, as the seizure of contraband has been made on a highway between Raipur and Dhamtari. Therefore, this applicant has no connection with the offence committed. Hence, the applicant is entitled for grant of anticipatory bail. Reliance is placed on the judgment of Supreme Court in **Amar Singh Ramjibhai Barot vs State of Gujrat** reported in **(2005) 7 SCC 550**.

5. So far as applicant Sadanand Bhadra is concerned, it is submitted that this is second bail application of this applicant for grant of anticipatory bail. As per evidence present in the complaint case filed against this applicant, no case is made out against him, therefore, the inclusion of this applicant in this case is totally without any basis. Hence, it is prayed that he may be granted anticipatory bail.
6. As regards applicant Vishnu Bhadra, learned counsel submits that there is practically no evidence against him in the complaint case filed. This applicant has been arrayed as an accused only on the basis of memorandum statement given by co-accused. It is also submitted that the investigation in this case cannot be said to be a fair investigation and it is hit by the judgment of the Supreme Court in **Mohan Lal Vs. State of Punjab**, reported in **AIR 2018 SC 3853** in which it has been very clearly laid down that in case where the complainant and the investigator is one and the same person, it would vitiate the investigation.

Reliance has also been placed on the judgment of Supreme Court **Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence** reported in **2018 CRI.L.J. 4346** wherein it was held that conviction of an accused solely based on the statement

given by co-accused cannot be sustained, therefore, it is prayed that on this ground the applicant is entitled for grant of regular bail.

7. Learned counsel for respondent DRI submits that Section 37 of the NDPS Act very clearly provides that in case of commercial quantity, bail can be granted to the accused person only in case the Court is of the opinion that no offence has been committed and that the Court believes that he will not commit similar offence in future. Respondent has authority under Section 42 of NDPS Act to investigate the case. Relying upon the judgment of Supreme Court in ***Kanhaiya Lal vs Union of India***, reported in **(2008) 4 SCC 668**, it is submitted that as the officers of revenue intelligence are not police officers within the meaning under Section 25 of Evidence Act, therefore, confessional statement made by any accused before such officer is admissible in evidence. Thus, the memorandum statements made by the accused person against the applicants in this cases are legally admissible evidence and which clearly show that these applicants are important links in the supply chain of narcotic substance and it is a case where huge quantity of contraband has been seized. With respect to the judgment of Mohan Lal(supra), it is submitted that the principle laid down in that case is applicable only to police officers and not to the officers of Intelligence. The judgment of Mohal Lal has been modified by the Supreme Court in Varinder Kumar Vs. State of Himachal Pradesh in CRA No. 2450-2451/2010 vide judgment dated 11.2.2019, hence, none of the applicants is entitled for grant of anticipatory or regular bail.
8. In reply, it is submitted by the counsel for applicants that the modification made by Supreme Court in Varinder Kumar (supra) is not

applicable in this case because the judgment of Mohal Lal (supra) was passed on 16.8.2018 whereas complaint has been filed against the applicant in the month of December, 2018. It is submitted that the ratio laid down in Kanhaiya Lal(supra) is not applicable in this case because confessional statement can be used only against the giver of the statement. Which is very clearly mentioned in the para-44 of Kanhaiya Lal judgment. Hence, it is prayed that the applications be allowed.

9. Heard both the parties and perused the case diary.
10. On 23.6.2018, the officer of respondent DRI stopped a truck bearing registration No.C.G.-07-CA-5727. The driver and other occupants of the truck informed that they are transporting dry coconut. However, subsequently they made admissions before the officer of DRI that they are transporting ganja, which is kept below the dried coconuts. The truck was searched and seizure of 6,545 kg of ganja worth Rs.9,81,75,000/- was made from the accused persons present on the spot. Co-accused Konduru Dharma Rao made a statement that he himself is owner and driver of the said vehicle. However, the registration has not been transferred. The accused persons who have been arrested namely-Premanand Bhadra & Vishnu Bhadra have made confessional statement before the officer of DRI that they along with their family members including applicant Sadanand Bhadra are engaged in purchase and sale of ganja and they are the suppliers of ganja which has been seized in this case.
11. Considered on all the facts and circumstances of this case. The position of Intelligence officer of DRI is altogether different from that of a police officer. Therefore, the confessional statement made in presence of such officer may have evidentiary value if it is proved in

accordance with law. The principle laid down in Mohan Lal's case (supra) is clearly with respect to the police officers. Section 30 of the Evidence Act empowers a Court to consider confessional statement made by one accused against another accused. Therefore, after over all consideration, for the reasons that the huge quantity of ganja seized in this case, which shows involvement of a complete racket in the said transportation of ganja, a narcotic substance, therefore, I am not inclined to allow the applications of these applicants.

12. Accordingly, the anticipatory and regular bail applications of the respective applicants are rejected.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha