

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 16.04.2019

Pronounced on 18.04.2019

MCRC No. 2404 of 2019

- Rinku Choudhari S/o Jugend Singh Aged About 32 Years R/o Village Kosikala 375 Bihariji Colony, Police Station- Kosikala, District- Mathura, Uttar Pradesh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station G.R.P. Thana, Raipur, Chhattisgarh.

---- Non-Applicant

For applicant	Mr. Avinash Choube and Mr. Malay Shrivastava, Adv.
For State	Mr. Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta

CAV ORDER

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. Earlier the first bail application of the applicant was dismissed as withdrawn by this Court on 31.01.2019 in MCRC No. 290 of 2019.
3. The applicant has been arrested in connection with Crime No 184/2018 registered in police station G.R.P. Thana, Raipur (CG) for offence punishable under Section 20(B) of the NDPS Act.
4. Prosecution story in brief is that on the information of informant Sub Inspector L.S. Rajput posted at G.R.P. Thana, Raipur on 21.06.2018 at about 17:30 hrs, at platform No. 2/3 Railway Station, Raipur, seized 22 kg cannabis from one airbag, one pithoo bag, which were in the possession of the applicant.
5. Counsel for the applicant argued that the applicant is innocent and has been falsely implicated. Alleged seizure effected from open place. Informant and investigator is one person. Section 50 of the NDPS Act has not been complied with. Hence applicant be released on bail.
6. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicant in the police case diary.
7. Counsel for the applicant drew my attention on the judgment of the Hon'ble Supreme Court in **Arif Khan vs State of Uttarakhand** in Criminal Appeal No. 273/2007 decided on 27.04.2018 wherein Hon'ble

Supreme Court observed that Section 50 of the NDPS Act is mandatory and so far as officer is concerned an obligation is cast upon him to apprise the suspect of his right to be searched before a gazetted officer or a magistrate.

8. In the matter of **S.K. Raju @ Abdul Haque @ Jagga vs State of Westbengal** in Criminal Appeal No. 459 of 2017 pronounced on 05.09.2018 Hon'ble Supreme Court has laid down following judicial precedent:-

“ Section 50 of the NDPS Act would only apply to search of a person and not to any bag, article or container etc. being carried by him.”

9. In the case in hand alleged cannabis was not seized from the person of the applicant or his body. Alleged cannabis was seized from the bags carried by him. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **S.K. Raju (supra)** applicant does not get any help from aforesaid judgment of Hon'ble Supreme Court in the matter of **Arif Khan (supra)**.
10. Counsel for the applicant drew my attention on the judgment of the Hon'ble Supreme Court in **Mohan Lal vs State of Punjab** in Criminal Appeal No. 1880/2011 decided on 16.08.2018 wherein Hon'ble Supreme Court observed that when informant and investigating officer is a same person, investigation is said to be vitiated.
11. In the case in hand informant and investigating officer is same person i.e. Sub Inspector L.S. Rajput. What would be the effect of this fact that in the case in hand investigating officer and informant is a same person, would be considered at the time of the appreciation of the evidence for disposal of the case. At this stage this Court cannot scrutinise or appreciate the evidence. Thus, at this stage applicant does not get any help in the context of bail from the aforesaid judgment of the Hon'ble Supreme Court in the matter of **Mohan Lal (Supra)**.
12. Looking to the above mentioned facts and circumstances of the case, the seriousness of the offence, and the impact of granting bail to the applicant, this Court is not inclined to grant bail to the applicant.
13. The application is rejected.

Sd/-

(Sharad Kumar Gupta)
Judge