

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

RESERVED ON 16-07-2019

DELIVERED ON 17-07-2019

MCRC No. 4119 of 2019

- Aalam S/o Jahir Aged About 29 Years R/o M - 75, Sector - 23, Sanjay Nagar, Police Station Kavinagar, Ghaziabad, District - Ghaziabad, Uttar Pradesh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station - Bhanpuri, District - Baster Chhattisgarh.

---- Respondent

MCRC No. 4120 of 2019

- Wasim S/o Aalimuddin Aged About 23 Years R/o Kela Batta, Markas Masjid Road, Ghaziabad, District - Ghaziabad, Uttar Pradesh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Station - Bhanpuri, District - Baster Chhattisgarh.

---- Respondent

For applicants : Mr. Vishnu Koshta, Advocate
For non-applicant/State : Mr. Vikram Dixit, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board

17-7-2019

1. As both the above bail applications arise out of same crime number of same police station, they are being disposed of by this common order.
2. This is second 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. Earlier first bail applications of the applicants were rejected by this Court vide order dated 05.04.2019 for want of prosecution in M.Cr.C.

No.8344/2018 and M.Cr.C. No. 8496/2018 respectively.

3. The applicants have been arrested in connection with Crime No. 133/2017 registered in police station Bhanpuri, Jagdalpur, Distt. Bastar (CG) for offence punishable under Section 20(B) of the NDPS Act.
4. Prosecution story in brief is that on 12.10.2017 A.S.I. Dilip Thakur posted at Police Station Bhanpuri received an information from the informant that two persons are transporting cannabis by vehicle registration No. D.L.13-CQ-3000 from Orissa to Raipur. The said A.S.I. stopped said vehicle in front of police station Bhanpuri. Applicants were present in that vehicle. The said A.S.I. seized 151.400 kg cannabis from the said vehicle, from the joint possession of the applicants.
5. Counsel for the applicants argued that the applicants are innocent and have been falsely implicated in the present case, hence the applicants may be released on bail.
6. On the other hand, the State Counsel opposed the bail application. However, he further submitted that no criminal antecedent has been reported against applicants.
7. Counsel for the applicants further submitted that the applicants are in jail since 12.10.2017. In the case in hand the informant and the Investigating Officer are the same persons i.e. A.S.I. Dilip Thakur, as per the judicial precedent laid down by the Hon'ble Supreme Court investigation has become vitiate. The seizure witnesses turned hostile and have not supported the prosecution case. He drew my attention on the para Nos. 1 & 8 of the certified copies of the statements of P.W.-1 Munna Ram & P.W.-2 Bhagat Singh Thakur, which are the part of the bail application.
8. Counsel for the applicants placed reliance upon the judgment of Hon'ble Supreme Court in the matter of **Mohan Lal Vs. State of Punjab** reported in **2018 SCC on-line SC 974**, the relevant portion of para 31 reads as under:-

“31..... 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.....”

9. Counsel for the applicants further placed reliance upon the order of co-ordinate Bench of this High Court in the matter of **Abhilash Rawat Vs. State of Chhattisgarh** passed on 11.09.2018 in M.Cr.C. No. 5476 of 2018, where the co-ordinate Bench of this Court observed that where the informant and investigator are the same person then in the light of the judicial precedent laid down by Hon'ble Supreme Court case would fall under the ambit of an unfair/bias investigation.
10. Counsel for the applicants also placed reliance upon the order of co-ordinate Bench of this High Court in the matter of **Manoj Yadav & Anr. Vs. State of Chhattisgarh** passed on 17.09.2018 in M.Cr.C. No. 6089 of 2018, where the co-ordinate Bench has not laid any legal principle.
11. In the case in hand, the informant and investigator are the same person i.e. A.S.I. Dilip Thakur.
12. In the case in hand, I.O. A.S.I. Dilip Thakur is to be examined by the trial Court.
13. Looking to the alleged huge seized quantity i.e. 151.400 kg cannabis, looking to the gravity of the offence, looking to the impact of granting bail to the applicants on the society, this Court prima facie finds that, these facts that, I.O. and informant are the same person, applicants are in jail since 12.10.2017, allegedly seizure witnesses have turned hostile, are not sufficient to release the applicants on bail. Consequently, the second bail applications of the applicants are rejected.

Sd/-

(Sharad Kumar Gupta)
Judge