

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 528 of 2019

1. Bhagirathi Sahu, S/o Late Shri Chaitram, Aged About 69 Years R/o Village Bankimogra, Police Station Bankimongra District Korba Chhattisgarh., District : Korba, Chhattisgarh
2. Prahlad Kumar Sahu, S/o Shri Kheekram, Aged About 49 Years R/o Village Sasha – Pamgarh, District Janjgir - Champa Chhattisgarh.
3. Abhitesh Shukla, S/o Shri Shyamcharan Shukla, Aged About 22 Years R/o Bankimongra, Tahsil Katghora, Police-Station-Bankimongra, District-Korba, Chhattisgarh.

---- Petitioners

Versus

- State Of Chhattisgarh Through Thana-In-Charge, Police-Station Kusmunda , Korba, Chhattisgarh.

---- Respondent

For Petitioners	: Ms. Shivali Dubey, Advocate
For Respondents/State	: Ms.Akanksha Jain, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on board

12/09/2019

Heard.

1. The petitioners have filed this petition praying for deleting their name as accused in Crime No.208/18 registered at Police Station Kusmunda, District Korba (CG).
2. It is submitted that the petitioners have wrongly been arrayed as accused in Crime No.208/2018 registered at PS-

Kusmunda, District-Korba for the offences under Section 22 (3) of NDPS Act read with Section 34 of IPC. Krishna Sahu, son of petitioner No.1, is granted license to run Medical Store and also to keep stock. Similarly, petitioner No.2 is the Proprietor of 'Upeksha Medical Store'. The trial is going on and main witnesses have turned hostile, therefore, criminal case against the petitioners is baseless. As it is a case of recovery of prescription drugs, therefore, the prosecution may have been under the provisions of the Drugs & Cosmetics Act, 1940. The stock that was found in the house of petitioner No.1 was temporarily kept for the reason that the shop was under repair. There is no evidence against petitioner Nos.2 & 3 in the whole prosecution case. Hence, the prosecution against these petitioners not only amounts to violation of their constitutional and fundamental rights but also abuse of process of court as well as law. Hence, the petition be admitted.

Reliance has been placed by the petitioner on the judgment of Madras High Court in the matter of **Tidal Laboratories Pvt. Ltd. vs State of Tamil Nadu** reported in **2013(2) MWN(Cr.) 608** and also on the judgment rendered by Hon'ble Supreme Court in the matter of **Mohd. Shabir vs State of Maharashtra** reported in **(1979) 1 SCC 568**.

3. Learned State counsel opposes the submissions made and it is submitted, that the drugs seized in this case are also governed

by the NDPS Act regarding which specific authorization is required for purchasing and stocking the same and that can be sold only under a prescription of a doctor. Huge quantity of said drugs having content of ingredient which are also mentioned in the Schedules of NDPS Act, were found in the possession of petitioner No.1, whereas petitioner No.2 & 3 were found assisting him and keeping the stock in violation of the provisions of the Drugs & Cosmetics Act. Apart from this, the case is being tried, therefore, all the grounds raised in the petition can be raised in defence by the petitioners. Hence, petition be dismissed.

4. I have heard both the parties and perused the documents available on record.
5. On perusal of the documents filed along with the petition and also the case diary, which is present before this Court, it is found that seizure of huge quantity of medicines, having content of drugs which are prohibited for open sale and having contents of drugs in schedule of NDPS Act, were found in possession of petitioner No.1 which was kept in his house without there being any authorization for the same. The witnesses have given statement that petitioners No.2 & 3, who were present on the spot, were assisting the petitioner No.1 and stocking the same drugs.
6. The co-ordinate Bench of this Court vide order dated 9.12.2016 passed in a bunch of bail applications, leading case of which is M.Cr.C.No.5181/2016, Sudeep Agrawal v. State of Chhattisgarh,

has observed that the drugs containing Codeine, Alprazolam & Nitrazepam, are scheduled as psychotropic substances under NDPS Act and there is specific requirement to show the authorization or possession on the part of the person/accused.

7. Therefore, after overall consideration, I am of this opinion that whatever has been submitted on behalf of petitioners in this case are their grounds in defence which can be raised before the trial Court itself where the trial is going on. There is no substance present in the present petition establishing that the prosecution against the petitioners is altogether false. Hence, the petition being devoid of merits is liable to be dismissed and it is accordingly dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge