

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.5939 of 2019**

Jai Prakash Alias Chhota Rathore, S/o late Roopchand Rathore, aged about 28 years, R/o Mudhli, Out Post Hardibazar, District Korba (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Out Post Hardibazar, Police Station Kushmunda, District Korba (CG).

---- Non-applicant

For Applicant : Mr. Pushpendra Singh Baghel and Mr. Shyamji Dwivedi, Advocates

For Non-applicant : Mr. Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****05.11.2019**

1. Inspector Vijay Kumar Chelak, posted at Out post Hardibazar.
2. This is the second bail application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.208/2018 registered at Police Station Kushmunda, District Korba for the offence punishable under Section 22(3) of N.D.P.S. Act, 1985 and Section 34 of I.P.C.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 20.06.2019 passed in M.Cr.C. No. 7027/2018 considering prima facie material available on record against him.
4. Case of the prosecution, in brief, is that on 29.07.2018 at about 13:50 hours at Mudhali Chowk at village Ralia, Inspector Vijay Chelak posted at Out Post Hardi Bazar seized from applicant 90 bottles of Onerex syrup, each containing 100 ml. Total quantity which was seized from him was 9,000 ml= 9 ltr=about 9 kg. As per FSL report in the said syrup, codeine was present. As per Note No.4 of Notification, entire

quantity of mixture or solution will be considered.

5. Counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the present case. He further submitted that witnesses of entire proceedings including search and seizure have been examined before the trial Court. They turned hostile and did not support the prosecution case. The applicant is in jail since 29.07.2018, hence the applicant may be released on bail.
6. On the other hand, counsel for the State opposed the bail application. However, he submitted that no criminal antecedent has been reported against the applicant as per police case diary.
7. This is true that the detention period of the applicant is a considerable factor for disposal of the bail application. But equally, it is also true that some other factors like seriousness of the offence and impact of granting bail to the applicant on society are also material and important factors for disposal of the bail application of the applicant.
8. As per certified copies of the statements of Shalik Ram Ratre (P.W.2) and Ram Hari (P.W.3) who are the witnesses of the alleged seizure, search and other proceedings did not support the prosecution case and turned hostile. But in the case in hand, Investigating Officer is to be examined. Moreover, turning hostile of some witnesses itself is not a sufficient ground to enlarge the applicant on bail.
9. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is no material change in the circumstances of the case which may entitle the applicant to enlarge him on bail in the second round of litigation. Consequently, the second bail application of the applicant is rejected. However, the trial Court is directed to expedite the trial and dispose of case as soon as possible from the date of receipt of certified copy of this order.
10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-