

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 5908 of 2019**

Tuna Bagh, S/o Varun Bagh, Aged About 22 Years, R/o Village Mathura, Thana Junagad, District Kalahandi, Odisha (Orissa).

---- Applicant**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Mahasamund, District Mahasamund, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Vikash Pradhan, Advocate.
For State/Non-Applicant	:	Shri Shakti Singh Thakur, P. L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****20.09.2019**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.'), for grant of regular bail, as the applicant, Tuna Bagh, has been arrested on 07.01.2018 in connection with Crime No. 18/2018, registered in Police Station Mahasamund, District Mahasamund (C.G.) for the offence punishable under Section 20(b) of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act, 1985').
2. The case of the prosecution, in brief, is that on 07.01.2018 a secret information was received by the police of Police Station

Mahasamund that applicant Tuna Bagh and his friend Pradeep Niyal, were transporting the 'Cannabis Hemp' (Ganja) by their vehicle 'Tata Indigo Manja' bearing its Registration No.DL 4C AL 1637. Based upon the said information, the said vehicle was stopped by the concerned police officer and upon search being made, the alleged 64.2 Kg Ganja was recovered from their joint possession. Accordingly, they were arrested on 07.01.2018 for the aforesaid offence and the charge sheet has been submitted in connection with the said crime after investigating the same.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in connection with the aforesaid crime. He submits further that the attesting witnesses of the seizure memo namely Lalit Kumar Ratre (PW-1) and Vishwanath Chakradhari (PW-2) have already turned hostile. He submits further that the applicant is in jail since 07.01.2018 and since the co-accused namely Pradeep Niyal has already been enlarged on bail, therefore, the present applicant may also be enlarged on bail.
4. On the other hand, Shri Thakur learned counsel for the State while opposing the bail application submits that on the basis of the secret information, a search was made in which, the alleged 'Cannabis Hemp' (Ganja) was recovered from the joint possession of the applicant and his friend on 07.01.2018, when they were transporting the same illegally. According to him though the attesting witnesses of the seizure memo have turned hostile, but the offence is of a serious nature, therefore, the application

deserves to be rejected.

5. I have heard learned counsel for the parties and perused the entire relevant papers annexed with this petition along with the case diary carefully.
6. Having considered the facts and circumstances of the case and considering further that the attesting witnesses of the seizure memo have already turned hostile and not supported the prosecution story and the co-accused has already been enlarged on bail and that by taking into consideration further that the applicant is in jail since 07.01.2018, I am inclined to enlarge the present applicant on bail.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that on furnishing a personal bond in sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one surety in like sum to the satisfaction of the concerned trial Court for his appearance before it as and when directed, the applicant shall be released on bail. It is, however, made it clear that I have not entered into the merits of the case and the trial Court shall proceed with the matter without influencing any of the observations of mine.

Sd/-
(Sanjay Agrawal)
Judge