

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**RESERVED ON 21-10-2019****DELIVERED ON 23-10-2019****MCRC No. 6388 of 2019**

1. Vaibhav Banura Konde S/o Rajendra Banura Konde Aged About 24 Years R/o Gopalnagar Baounera R/o Prabhat 13 Amrawati Police Station Rajkote, District Amarawati Maharashtra.
2. Pawan Solanki S/o Mangal Solanki Aged About 26 Years R/o Vilasnagar Lohar Line Amarawati, Police Station Gadgenagar, District Amaravati Maharashtra.
3. Vinod Solanki S/o Babulal Solanki Aged About 45 Years R/o Vilasnagar Lohar Line Amarawati, Police Station Gadgenagar District Amarawati Maharashtra District Amravati, Maharashtra.
4. Mohd Firoj S/o Mohd. Yusuf Sheikh (Actual Name) Aged About 28 Years R/o Juni Khallari Line Kadar Jhanda Police Station Kamti, District Nagpur, Maharashtra, District Nagpur, Maharashtra

---- Applicants**Versus**

State Of Chhattisgarh Through Police Station Farasgaon, District
Kondagaon Chhattisgarh.

---- Respondent

For applicants	Mr. Vishnu Koshta, Adv.
For non-applicant/State	Mr. Praveen Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta

1. This is fourth 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. Their 1st and 3rd bail applications bearing MCRC No. 6638/2018, and MCRC No. 2765/2019 were dismissed as withdrawn vide orders dated 13-11-2018 and 8-5-2019 respectively and 2nd bail application bearing MCRC No.583/2019 was dismissed for want of prosecution vide order dated 14-2-2019.
2. The applicants have been arrested in connection with Crime No. 5/2018 registered in police station Farasgaon, Distt. Kondagaon (CG) for offence punishable under Section 20-B of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act').
3. Prosecution story in brief is that on 18-1-2018 sub-inspector Bhanu Pratap Yadav posted at PS Farasgaon received an information from the informant that 4 persons are transporting cannabis by TATA INDIGO car bearing registration No. MH 04 DN 1576 from Jagdalpur to Farasgaon. By raising blockade he stopped said car. All the 4 applicants were present in said

car. After completing some formalities he seized 42.752 kg cannabis under the seat of said vehicle.

4. Counsel for the applicants submitted that applicants are innocent and have not committed any offence. The seizure witnesses and memo of Mukhbir information namely P.W. 1 Santosh Sethiya and P.W. 2 Kamlesh Netam have turned hostile in the trial Court. In the case in hand, there is non-compliance of Section 50 of the NDPS Act. Applicants are in jail since 18-1-2018. There is no likelihood of early disposal of the case. Thus, the applicants may be released on bail.

5. Counsel for the applicants further submitted that in 5 other cases, coordinate bench of this Court has granted bail. Thus, in the case in hand, applicants are entitled for bail. He drew my attention on the orders of coordinate bench in the matter of **Avinash Fransis -v- State of CG** in MCRC No. 5511/2017 dated 24-11-2017, in the matter of **Manoj Yadav and anr. -v- State of CG** in MCRC No. 6089/2018 dated 17-9-2018, in the matter of **Jainendra Kumar alias Gaurav Sharma -v- State of CG** in MCRC No. 4749/2019 dated 19-8-2019, in the matter of **Balmiki Sunani -v- State of CG** in MCRC No. 4737/2019 dated 19-8-2019, in the matter of **Niraj Kumar Kanojiya -v- State of CG** in MCRC No. 5830/2019 dated 11-9-2019.

6. Counsel for the applicants further submitted that as per the provisions of Article 141 of Constitution of India, the order/judgment of Hon'ble Supreme Court is binding upon all courts. He further submitted that as per the provisions of Article 142 of the Constitution of India, decree or order passed by Hon'ble Supreme Court in exercise of its jurisdiction for doing complete justice is enforceable throughout the territory of India.

7. Counsel for the applicants placed reliance in the judgment on Hon'ble Supreme Court in the matter of **Arif Khan -v- State of Uttarakhand** [2018 SCC Online SC 459] wherein Hon'ble Supreme Court has laid down following judicial precedent :-

“It is settled position of law that the requirements of Section 50 of the NDPS Act are mandatory.”

8. Earlier this Court rejected the bail application bearing MCRC no. 56/2019 (**Lokendra Singh and others -v- State of CG**) decided on 6-2-2019 relating to offence punishable under Section 20(b) of NDPS Act against which the petition under Article 136 of the Constitution of India bearing Special Leave Petition (Criminal) No. 5796/2019- **Lokendra Singh and ors -v- The State of CG** was dismissed by Hon'ble Supreme Court on 16-7-2019.

9. Further earlier this Court has rejected the bail application bearing

MCRC no. 636/2019 (Omkar Gore and Duttatray Ghumer -v- State of CG) decided on 13-2-2019 relating to offence punishable under Section 20(b) of NDPS Act against which the petition under Article 136 of the Constitution of India bearing Special Leave Petition (Cri) No. 8305/2019 – **Duttatray Ghumer -v- The State of CG** was dismissed by Hon'ble Supreme Court on 17-9-2019.

10. In the case in hand, there is no question of enforceability of order passed by Hon'ble Supreme Court in the aforesaid matter of **Arif Khan** (supra) before this Court. Thus, to decide this bail application, applicants do not get any help from the provisions of Article 142 of Constitution of India. Thus, this Court is not impressed with the argument raised by Counsel for the applicants regarding this matter.

11. From the provisions of Article 141 of the Constitution of India and the aforesaid orders of Hon'ble Supreme Court in the matter of **Lokendra Singh** (supra) and in the matter of **Omkar Gore** (supra), this Court finds that if the Hon'ble Supreme Court laid down any law or judicial precedent in any order or judgment it is binding upon all courts within the territory of India. If no legal principle has been laid down then allowing or dismissing order/judgment is not binding upon any Court of India.

12. In the case in hand, aforesaid orders of coordinate bench of this Court in the matter of **Avinash Fransis** (supra), **Manoj Yadav** (supra), **Jainendra Kumar alias Gaurav Sharma** (supra), **Balmiki Sunani** (supra) and **Niraj Kumar Kanojiya** (supra), no law or legal principle has been laid down. Thus, applicants do not get help from said orders. Thus, this Court rejects the argument putforth by the counsel for the applicants in that reference.

13. In the case in hand, Section 50 of the NDPS Act does not attract because alleged contraband was not seized from the person of any applicant. Hence applicants do not get any help from the aforesaid judgment of Hon'ble Supreme Court in the matter of **Arif Khan** (supra). Thus, this Court is not impressed with the argument advanced by counsel for the applicants and this Court disallows it in that reference.

14. Mere turning hostile of seizure witnesses itself is not a sufficient ground to enlarge accused on bail in subsequent round of litigation. Moreover, in the case in hand IO is to be examined.

15. Delay in trial is a considerable factor for disposal of bail application. But equally it is also true that seriousness of the offence, effect of granting bail to the accused on society are more material and important factors for disposal of the bail application.

16. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not the fit case where the applicants may be released on bail in 4th round of litigation. Consequently, the 4th bail application of the applicants is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge