

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6454 of 2019**

- Najim Ansari (Mo. Nazim Ansari) S/o Mohd. Kadir Ansari Aged About 23 Years R/o Deepatoli (Dipatoli), Post And Police Station Narayanpur, District Jaspur Chhattisgarh

---- Applicant

Versus

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

---- Non Applicant

MCRC No. 7072 of 2019

- Mo. Najrullah S/o Mo. Sheikh Hasan Aged About 33 Years R/o Gandhi Chowk, Sekbahar, Ward Number 11, Chouki Kotba, Police Station Bakbahar, District Jashpur, Chhattisgarh

---- Applicant

Versus

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

---- Non Applicant

For the Applicants	:	Mr. Rajesh Jain, Advocate
--------------------	---	---------------------------

For Non Applicant	:	Mr. Ravi Maheshwari, P. L.
-------------------	---	----------------------------

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****06.12.2019**

1. Shri Vinod Kumar Sahu, Investigating Officer is present in person.
2. Since both these bail petitions arise out of same crime no. of same Police Station they are being disposed off by this common order.
3. This is third bail application of the applicant Najim Ansari. Earlier his first bail application was dismissed as withdrawn with liberty to file subsequent bail application after examination of seizure witnesses by this Court vide order dated 24.10.2018 passed in MCRC No.6102 of 2018. His second bail application was dismissed by Registry on

08.08.2019 due to non compliance of peremptory order passed by this Court dated 19.07.2019 in MCRC No.4743 of 2019.

4. This is second bail application of applicant Mo. Najrullah. Earlier his first bail application was rejected by Registry on 08.08.2019 due to non compliance of peremptory order passed by this Court dated 19.07.2019 in MCRC No.4743 of 2019.
5. Perused the case diary provided by the learned counsel for the State in connection with Crime No.32/2018 registered at Police Station- Farasgaon District- Kondagaon (C.G.) for the offence punishable under Section 20-B of N.D.P.S. Act, 1985.
6. Case of the prosecution, in brief is that on 17.04.2018 Sub-Inspector Bhanu Pratap Yadav received information from informant that two persons are transporting the cannabis from Jagdalpur to Raipur by pick up vehicle No. JH/03/R/2852, on very day Sub-Inspector Bhanu Pratap Yadav seized 195.635 kg cannabis from the joint possession of both applicants.
7. Learned counsel for the applicants submitted that in the informant information memo, Rojnamcha Sanha number and time are empty. Seizure witnesses have been examined in trial Court, they turned hostile and did not support the prosecution case. He drew my attention on true copy of the statements of the P.W.1 Deepak Gosai, P.W.2 Parmanand Nag which are the part of the bail applications. He further submitted that in all other relevant documents there is a overwriting in time. There is no countersign of the concerned Officer. He further submitted that applicants are in jail since 17.04.2018 and there is no progress report in trial. He further submitted that there is no receiving in the memo for not obtaining the search warrant. He further submitted that other Coordinate Benches are granting bail where the seizure witnesses have turned hostile during the examination in the trial Court.
8. On the other hand, learned counsel for the State opposed the bail application, however, submitted that there is no criminal antecedent against the applicants reported in police case diary.
9. This is well settled legal position that while dealing with the bail applications Court can neither scrutinize the evidence nor appreciate

the same.

10. This is also well settled legal position that while dealing with the bail applications Court cannot touch the merits and demerits of the case.
11. This is true that detention period and delay in trial of the accused is material factor while deciding their bail applications.
12. This is also true that the seriousness of the offence and impact of granting bail to the accused on society are also material and important factors while dealing with the bail applications of the accused.
13. What would be the effect of non mentioning the Rojnamcha Sanha number and time in memo of informant information and overwriting in time, in different documents, would be considered at the time of the appreciation of the evidence.
14. In the memo dated 17.04.2018 written by office of the S.H.O. Farasgaon to the S.D.O. Police Farasgaon it was requested to him to come on the spot.
15. As per the enclosure, memo of information of informant was also enclosed in that letter and there is also an acknowledgement.
16. In the matter of **Anindita Das Vs. Srijit Das (2006) 9 Supreme Court Cases 197** Hon'ble Supreme Court observed in Para No. 2 which reads as under:-
 - (2) In support of this petition, a large number of Authorities have been cited, namely **Reena Bahri V. Ajay Bahri, Leena Mukherjee V. Rabi Shankar Mukherjee, Ram Gulam Pandit V. Umesh J. Prasad and Rajwinder Kaur V. Balwinder Singh**. These Authorities are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent.
17. Looking to the aforesaid observation made by Hon'ble Supreme Court this is very clear that if any law is laid down then it operates as a precedent and is binding otherwise not. Thus this Court is not bound by other orders where no legal principle has been laid down.
18. In the case in hand though seizure witnesses have turned hostile but Investigating Officer is to be examined.
19. Looking to the above mentioned facts and circumstances of the case, looking to the allegedly seized quantity of cannabis, looking to the seriousness of the offence, looking to the impact on society of granting

bail to the accused, this Court is not inclined to give the benefit of Section 439 CrPC to the applicants.

20. Consequently the bail applications of applicants are hereby rejected. However, trial Court is directed to expedite the trial and dispose of the case as soon as possible. He is further directed to submit in every two months the progress report from date of receipt of copy of this order.
21. Registrar Judicial is also directed to immediately send the copy of this order to Concerned Court.

Sd/-

(Sharad Kumar Gupta)
Judge

Parul