

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7594 of 2019**

- Mohammad Safi S/o Nasif Ahmad Aged About 28 Years R/o E- 16, B-260 T-Huts, Near Ramjaniya Masjid, New Silampur, North East, New Delhi., District : New Delhi, Delhi

---- Applicant**Versus**

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

---- Non-applicant

For Applicant : Shri Sushil Dubey, Advocate.

For Non-applicant : Shri Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****17.12.2019**

1. This is third bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court on 16.07.2018 in MCRC No. 3713 of 2018 considering prima faice case against the applicant and the second bail application of the applicant has been rejected by this Court on 03.01.2019 in MCRC No. 7315 of 2018 considering the prima facie case against the applicant.
3. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.67/2017 registered at Police Station Farasgaon, District Kondagaon (C.G.) for the offence punishable under Section 20(B)(ii)(स) of NDPS Act, 1985.
4. Case of the prosecution, in brief is that on 18/07/2017 Sub Inspector Krishna Patle and their staff received information from

informer that one person is coming from Jagdalpur to Farasgaon in vehicle bearing No. DL-12-CA-1930 carrying cannabis. On such information Sub Inspector Krishna Patle seized 110 Kg. and 134 Grams of cannabis from the aforesaid vehicle. The vehicle was in possession of the applicant. The seizure took place on very day by 17:30 hours in front of Police Station, Farasgaon.

5. Learned counsel for the applicant argued that the applicant is in jail since 18.07.2017, seizure witnesses and some other witnesses have turned hostile and did not support the prosecution case, provisions of Section 42 and 50 of the NDPS Act have not been complied with, thus he may be released on bail.

6. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no criminal antecedent against the applicant.

7. Counsel for the applicant placed reliance on the order of coordinate Bench of this Court passed on 16.09.2019 in the matter of Ramjeet Singh Rathore vs. State of Chhattisgarh in MCRC 5512/2019 and on 16.09.2019 in the matter of Budhram Sodhi vs. State of Chhattisgarh in MCRC 2229/2019.

8. In the matter of **Anindita Das -v- Srijit Das** [(2006) 9 SCC 197] Hon'ble Supreme Court has 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* [(2002) 10 SCC 136] , *Leena Mukherjee v. Rabi Shankar Mukherjee* [(2002) 10 SCC 480] , *Ram Gulam Pandit v. Umesh J. Prasad* [(2002) 10 SCC 551] and *Rajwinder Kaur v. Balwinder Singh* [(2003) 11 SCC 726]. 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.”

9. The aforesaid orders passed in the matter of Ramjeet Singh Rathore (Supra), Budhram Sodhi (Supra) are based on the facts of

their respective cases. No legal principle has been laid down in these cases. Thus, looking to the observations made by the Hon'ble Supreme Court in the matter of Anindita Das (Supra) they do not operate as precedent.

10. The detention period of accused and delay in trial are the material factors for disposal of the bail application of the accused, but, equally it is also true that seriousness of the offence, effect of granting bail to the accused on the society are more important and material factors while deciding the bail application of the accused which cannot be ignored.

11. Turning hostile of the seizure witnesses is itself not a sufficient ground to enlarge the accused on bail. Moreover, in the case in hand the investigating officer is to be examined.

12. Prima facie it does not appear that there is any violation of provisions of Sections 42 and 50 of the NDPS Act.

13. Looking to the above mentioned facts and circumstances of the case, looking to the alleged seized quantity of cannabis, this Court finds that this is not a fit case where the applicant may be released on bail in third round of litigation.

14. Accordingly, the third bail application of the applicant is rejected. However, the trial Court is directed to expedite the trial and dispose off the case as soon as possible.

15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE