

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 9755 of 2018**

- Keshari @ Kesharu, S/o Late Shri Ramcharan, Aged About 53 Years, R/o Village Gujra, Thana Bhakhara, Tahsil, Civil And Revenue District Dhamtari Chhattisgarh,

---- Petitioner

Versus

- The State Of Chhattisgarh Through The Station House Officer, Police Station Bhakhara, District Dhamtari Chhattisgarh,

---- Respondent

For Applicant	:	Shri Sunil Sahu, Advocate
For Respondents/State	:	Shri Chandresh Shrivastava, Deputy A.G.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****07.01.2019**

1. This is the first bail application preferred under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) for grant of regular bail to the applicant as he has been arrested on 25.10.2018 in connection with Crime No.18/2018 registered in Police Station Bhakhara, Distt. Dhamtari for the offence punishable under Sections 20 (b) (ii) (B) and 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act of 1985)

2. Case of the prosecution is that on 04.02.2018 a secret information has been received by the Officer of Police Station – Bhakhara, District Dhamtari that the applicant and his wife were in possession of illegal liquor and kept the same in their *Dhaba "Sher-A-Punjab"*. Based upon the said information, a search was made and 31 quarters of country made liquor was seized from the applicant's wife Gayatri Sahu and accordingly, she was arrested and offence has also been

registered against the applicant in Crime No.17/2018, who was absconded at that particular time. Further prosecution story is that the concerned Police Officer has made a search of his house also where the alleged contraband article (ganja) 3.8 kg and 10.9 kg. *Donda* (Poppy Straw) was recovered and accordingly the applicant's wife was arrested on 04.02.2018 and thereafter the present applicant was also arrested on 25.10.2018 for the aforesaid offence and the Challan has been submitted after investigation in Crime No.18/2018.

3. Shri Sunil Sahu, learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in connection with the said crime. He submits further that in connection with crime No. 17/2018, the applicant has already been enlarged on bail vide order dated 02.01.2019 by this Court in M.Cr.C.No.9754/2018. He submits further that the witnesses of the seizure memo, namely, Roshan Naagrachi and Prem Prakash have been given up by the prosecution and the applicant is in jail since 25.10.2018, therefore, he may be enlarged on bail.

4. On the other hand, Shri Chandresh Shrivastava, learned counsel for the State while opposing the bail application submits that on the basis of secret information to the effect that the applicant and his wife were in possession of the illegal liquor and kept the same in their *Dhaba* and when the house was searched the said contraband article was also recovered apart from the aforesaid liquor. According to Shri Shrivastava, though the attesting witnesses of the seizure memo were given up by the prosecution but as the offence is of serious in nature, therefore, the bail application deserves to be rejected.

5. I have heard learned counsel for the parties and perused the case diary carefully.

6. Having considered the facts and circumstances of the case, considering further that the attesting witnesses of the alleged seizure memo have been given up by the prosecution and that by taking into consideration further that the contraband article so recovered was less than the commercial quantity as prescribed under the notification issued by the Central Government, I am inclined to enlarge the applicant on bail.

7. The bail application is accordingly allowed. It is directed that on furnishing a personal in the sum of Rs.1,00,000/- with one local 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 while allowing this application.

Sd/-
(Sanjay Agrawal)
Judge