

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.No.1506 of 2020**

Sunil Dhritlahre son of Loknath Dhritlahre, aged about 27 years, resident of Hathadandu, P.S. Nawagarh, District Bemetara (CG)

---Applicant

Versus

State of Chhattisgarh Through Station House Officer, Police Station Gidhouritundra, District Baloda Bazar (CG)

---Non-Applicant

For Applicant	:	Mr.Satya Prakash Verma, Advocate
For Non-applicant	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/6/2020

1. Proceedings of this matter have been taken up through video conferencing from High Court Premises at Bodri, Bilaspur.
2. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for release him on regular bail during trial in connection with Crime No.15/2020, registered at Police Station-Gidhouritundra, District-Baloda Bazar (CG), for the offence punishable under Section 20(B) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'NDPS Act')
3. Case of the prosecution, in brief, is that 36.300 kg. of ganja was seized from possession of the present applicant and other three co-accused persons and thereby committed the aforesaid offences.
4. Mr.Satya Prakash Verma, learned counsel for the applicant in his oral as well as written submission submitted before this Court, would submit that the applicant is not registered owner of the offending vehicle bearing registration No.C.G.04 F.C. 9100 as it is duly

registered and insured in the name of Ramavtar Agrawal. In fact, the vehicle was taken on hire by Nohar Anant, Santosh Mangale and Bhola Satnami on the pretext of election and they were using and operating the said vehicle on the date of offence. The applicant was not in possession of the said vehicle, which is apparent from the fact that the applicant was arrested on 19.1.2020 and thereafter the said vehicle was got registered/transferred in the name of the present applicant on 22.1.2020 and new mortgage deed was registered on 28.1.2020, as such, provisions contained in Sections 42 and 50 of the NDPS Act have not been complied with. The applicant was not involved and he has wrongly been implicated in crime in question. He relied upon the judgments of the Supreme Court in the matters of **Balvinder Singh and others v. Assistant Commissioner, Custom and Central Excise**¹ and **Bhola Singh v. State of Punjab**² to buttress his submission.

5. On the other hand, Mr. Matin Siddiqui, learned Deputy Advocate General for the State, would submit that in the vehicle owned by the present applicant, 36.300 kg. of ganja and one mobile were seized and the applicant has been arrested. Defense of 'alibi' was taken little late on 10.2.2020, whereas incident was occurred on 19.1.2020. Possession of contraband is established and accused is presumed to be in conscious possession. He would further submit that quantity of contraband is more than commercial quantity and unless requirements of Section 37(1)(b) of the NDPS Act are satisfied, the applicant is not entitled for privilege of regular bail.

6. I have heard learned counsel appearing for the parties and perused

¹ 2005 (4) SCC 146

² 2011(11) SCC 653

the case diary.

7. Section 37 (1) (b) of the NDPS Act clearly provides that no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Sub-section (2) of Section 37 of the NDPS Act provides that the limitation on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 on granting of bail.
8. The applicant has taken a plea that he is not in possession of the said vehicle as the vehicle was registered in his name little late after the date of offence on 22.1.2020, whereas the offence was committed on 19.1.2020, but the police has filed a copy of agreement entered into between erstwhile owner and the present applicant stating that the vehicle has been sold on 30.12.2019 by the said owner to the applicant though the vehicle was to be transferred subsequently. At this stage, when the investigation is going on, it cannot be established that there are no reasonable grounds for believing that he is not guilty of such offence. The applicant is at liberty to prove the aforesaid ground during the course of the trial as provided in Section 60(3) of the NDPS Act to prove that the vehicle was so used without his knowledge or conveyance and he has taken all reasonable precaution against such use, he was not owner thereof and he was not in possession of

said vehicle, as such, judgments cited by learned counsel for the applicant are not useful to the applicant.

9. At this stage, it cannot be held that there is no reasonable ground for believing that the applicant has not committed such offence. Accordingly, the bail application deserves to be and is hereby rejected.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-