

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1622 of 2020

1. Usha Mandal W/o Budhdev Aged About 45 Years Caste - Namoshudro, R/o House No. R. Z. 2003-B, Gali No. 26, Tuglabad Extension, Kalka G, South Delhi, Delhi, India
2. Vijay Gupta S/o Sanjay Gupta Aged About 42 Years Caste Baniya, R/o 553 B Transit Camp, Ward No. 2 Rudrapur, Udham Singh Nagar, Uttarakhand
3. Shankar Ray S/o Jogendra Ray Aged About 35 Years, Caste Namoshudro, R/o M.V. 72, P.S.79, District- Malkangiri, Odisha

---- Applicants

Versus

- State Of Chhattisgarh Through Police Station- Errabore, District : Sukuma, Chhattisgarh

---- Respondent

For Applicants	:	Ms. Kiran Jain and Mr. Ashok Kumar Komra, Advocates
For State	:	Mr. K.K. Singh, G.A.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/12/2020

Heard.

1. The applicants have been arrested in connection with Crime No.12/2019 in Special NDPS No.36/2019 registered at Police Station- Errabore, District : Sukuma, (C.G.) for the alleged commission of offence under Section 20(B) of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Prosecution case is that upon receipt of *Mukhbir* information regarding transportation of *Ganja*, it is alleged that the vehicle was intercepted and more than 86 KG of *Ganja* was recovered from the vehicle, in which, the applicants were found present and travelling.
3. Learned counsel for the applicants would submit that the applicants have been falsely implicated. He would submit that the entire proceedings

have been drawn in highly suspicious manner and the most crucial documents with regard to obtaining of consent, search, seizure and so-called recovery of *Ganja* have been prepared in a manner which creates serious doubt because the timing have been changed in the documents. Learned counsel for the appellants would submit that in the present case not only joint notice for consent was given but joint consent is said to be obtained. It is also submitted that there is no proper compliance of Section 42 (2) of NDPS Act, which creates serious doubt with regard to proceedings drawn by police.

4. On the other hand, learned State counsel opposes and submits that in the present case, a *Panchnama* of satisfaction as required under Section 42 of NDPS Act was drawn and only thereafter, police team reached at the spot, vehicle was stopped, the police team gave its own search and that of its vehicle and then only proceeded to search the accused and the vehicle after their consent and after due procedure, recovery of *Ganja* was made, proper *Panchnama* proceedings were drawn in presence of the witnesses and then it was kept in the custody in the *Malkhana* of the Police Station.
5. I have heard learned counsel for the parties and also gone through the contents of the case diary. On *prima facie* considerations, it is found that a *Dehati Nalishi* is said to be prepared at 17:10 hrs. on 10.07.2019 regarding receipt of *Mukhbir* information. A *Panchnama* towards due compliance of provision contained in Section 42(2) of the NDPS Act is said to have been prepared at 12:45 hrs. on 10.07.2019. Thereafter, the documents relating to search of the police team and its vehicle, search of witnesses, search of the vehicle of the accused and recovery *Panchnama* are all said to be prepared at the same time that is 12:45 hrs. in the Police Station- Errabore. Later on, in the *Panchnama* of search of the police team, its vehicle, witnesses, accused vehicle and recovery of *Ganja*, which earlier were shown to have been done at the same time of preparation of *Panchnama* under Section 42 (2) of NDPS Act have been struck off and time has been changed. The timing of self search and that of the vehicle by the police team has been changed from 12:45 hrs. to 13:45 hrs., that of all witnesses have also been changed from 12:45 hrs. to 13:45 hrs., the time of search of accused vehicle has also been changed from 12:30 hrs. to 14:30 hrs.

The aforesaid *prima facie* consideration shows that the time of preparation of *Panchnama* recording satisfaction under Section 42(2) of

NDPS Act was prepared at 12:45 hrs. on 10.07.2019 and the initial timings in *Vaahan Talashi Panchnama* and *Baramdagi Panchnama* are even prior to preparation of *Panchnama* under Section 42(2) of NDPS Act.

6. On above considerations, in the considered opinion of this Court, this Court on the basis of aforesaid material and discrepancy has to record a *prima facie* consideration that there are reasonable grounds to believe that the applicants are not guilty of commission of offence. Having recorded such satisfaction and required under Section 37(i)(b) of NDPS Act, particularly taking into consideration that the investigation is complete and charge sheet has also been filed in the present case, I am inclined to enlarge all the applicants on bail.
7. Accordingly, the application is allowed. It is directed that the applicants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.50,000/- along with one local surety of the like amount to the satisfaction of the concerned trial Court with following conditions:
 - (i) The applicants shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) The applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.
8. Before parting with the case, it has to be observed that the satisfaction is based on the material contained in the case diary and the charge sheet and the trial Court shall not be influenced by any of the observations made by this Court while deciding the case of the applicants and shall decide the case strictly in accordance with evidence laid before it during trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge