

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.No.2468 of 2020**

Mohammed Afzal Joya S/o Fazruddin Jova, aged about 24 years, R/o-Banjari Chowk, Golbazar Tehsil and Dist-Raipur (Chhattisgarh)

---Applicant

Versus

State of Chhattisgarh Through District Magistrate, Durg, District Durg (CG)

---Non-Applicant

For Applicant	:	Mr.B.P.Singh, Advocate
For Non-applicant	:	Mr.Gagan Tiwari, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/6/2020

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.104/2020, registered at Police Station-Pulgaon, District-Durg (CG), for the offence punishable under Sections 8/22(B) and 27(A) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'NDPS Act').
3. Case of the prosecution, in brief, is that 6 bottles of Phensikof syrup were recovered from possession of the present applicant and thereby committed the aforesaid offence.
4. Learned counsel for the applicant would submit that the applicant has not committed any offence and he has falsely been implicated in crime in question. He would further submit that quantity of codine is more than small quantity but lessor than commercial quantity. The applicant

has been arrested on 8.3.2020 and charge-sheet has already been filed, therefore, he may be released on regular bail.

5. On the other hand, learned counsel for the State would oppose the bail application and submit that as per decision of the Supreme Court in the matter of Hira Singh and another v. Union of India and another¹, total quantity of codine present in Phensikof syrup is 600 ml (6x100ml), therefore, he is not entitled to be released on bail.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. Taking into consideration the facts & circumstances of the case, nature & gravity of offence, pre-trial detention of the applicant i.e. since 8.3.2020 and total quantity of codine present in Phensikof syrup i.e. 600 ml., which is more than small quantity but lessor than commercial quantity because as per entry No.28 of notification dated 19.10.2001, small quantity is 100 ml. and commercial quantity is 1 kg., this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.
8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
9. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of ₹ 25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.
10. It is made clear that if the applicant has already been released on bail pursuant to the bail bonds already furnished in view of the order passed by the High Power Committee constituted in compliance of the order of the Supreme Court of India dated 23.3.2020 in the matter of In

¹ AIR 2020 SCC OnLine SC 382

Re : Contagion of COVID 19 Virus in Prisons (Suo Motu Writ Petition (C) No.1/2020), he need not furnish bail bonds afresh and the bail bonds already furnished shall be deemed to be the bail bonds furnished in compliance of the order of this Court, but if he has not furnished bail bonds earlier, then he will be required to furnish bail bonds.

Sd/-

**(Sanjay K. Agrawal)
JUDGE**

B/-