

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Order on : 26.08.2020****Order Passed on : 12/10/2020****M.CR.C. No. 3879 of 2020**

Vishnu Bhadra, S/o. Shri Kalicharan Bhadra, aged about 58 years, R/o. Satamguda, Maakali Hardware, Police Station Tehsil and District Malkangiri, Odhisha.

---- Applicant**Versus**

Directorate of Revenue Intelligence (DRI), Through : Nagpur Regional Unit, 6th Floor, B Wing, CGO Complex, Seminary Hills, Nagpur - 440006, Maharashtra.

---- Respondent

For Applicant	: Mr. Kishore Bhaduri, Advocate
For Respondent	: Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**C A V ORDER****12/10/2020**

1. This is the third bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No. F.No.DRI/MZU/NRU/INT – 87/2018, registered at Police Station – Directorate of Revenue Intelligence (DRI), Nagpur (Maharashtra) (C.G.) for the offence punishable under Section 8 (c), 20, 28 and 29 of N.D.P.S. Act. The first bail application M.Cr.C. No.1407/2019 of the applicant was dismissed on merits, vide

order dated 12.07.2019 and the second bail application M.Cr.C. No.5473/2019 was dismissed at motion state on 20.08.2019. However, the liberty was granted to the applicant to file repeat application after examination of the material witnesses.

2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. The applicant is in jail since 06.07.2018. The applicant has been implicated on the basis of the statement given by the co-accused persons. The applicant is aged about 58 years and he is suffering from diabetes and hypertension. The statement of the applicant that was recorded under Section 67 of the N.D.P.S. Act was a statement given under compulsion after he was arrested by the Police Officer and placed in confinement. Further the formalities as required under Section 67 of the N.D.P.S. Act were also not completed. The prosecution against him is of malicious nature. It is submitted that the ratio laid down by the Supreme Court in **Mohan Lal Vs. State of Punjab**, reported in **(2018) 17 SCC 627** is clearly applicable in this case because the complainant and the investigation officer is the same person. It is also submitted that the trial before the Special Judge, N.D.P.S., Raipur is not making any progress under the pandemic situation and it is almost withheld, because of which, so far only three witnesses have been examined in this case. It is submitted that according to the ratio laid down by the Supreme Court in **Sanjay Chandra Vs.**

CBI, reported in **(2012) 1 SCC 40**, the applicant has become entitled for grant of bail after filing of the charge-sheet. The evidence collected in the investigation regarding naxal connections of the applicant is totally false. It is further submitted that independent witnesses in this case have been examined before the Court, who have not made any statement against this applicant and also against the other accused persons. Therefore, they have been declared hostile by the prosecution.

3. Reliance has been placed on the judgment of Mohan Lal Vs. Sate of Punjab (supra), **Sujit Tiwari Vs. State of Gujrat & Ors**, reported in **2020 SCC OnLine SC 84**, order of this Court dated **03.10.2018** in **M.Cr.C. No.6299 of 2018 (Ravi Nadar Vs. State of C.G.)**, order of the Hon'ble Supreme Court in **Cr.A. No.296/2014 dated 04.09.2019 (Mohammed Fasrin Vs. State Rep. By the Intelligence Officer)**. Reliance has also been placed on the judgment of Supreme Court in **Harpreet Singh Bahad Vs. D.R.I.** reported in **2009 SCC OnLine Del 3013**, judgment of Orissa High Court in **Abhaya Paricha Vs. State of Orissa**, reported in **2015 SCC ONLine Ori 412**, judgment of Supreme Court in **Cr.A. No.949 of 2018 decided on 31.07.2018 (Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence)**, order of Punjab & Haryana High Court in **Cr.M.M. No.20838/2018 dated 10.01.2019 (Yogesh Rai Vs. State of Punjab)**, judgment of Supreme Court in State By

Inspector of Police Vs. Rajangam, reported in **(2010) 15 SCC 369**, judgment of Delhi High Court in **Leysilener Zandile Luthuli Vs. Directorate of DRI**, reported in **2018 SCC OnLine Del 12561**, judgment of Bombay High Court in **Yusuji Hinagata Vs. State & Anr.**, reported in **2019 SCC OnLine Bom 2474**, judgment of Delhi High Court in **Annabelle Analista Malibago Vs. DRI**, reported in **2018 SCC OnLine Del 12114** and in case of **Harish Joshi Vs. DRI**, reported in **ILR (2009) V Delhi 58**. It is submitted that as per the ratio laid down by the Supreme Court in citation mentioned herein above, the applicant is entitled for grant of bail.

4. Counsel for the respondent opposes the bail application and submission made in this respect. It is submitted that earlier bail application filed by the applicant has been dismissed on merits by a detailed order. The reliance of the applicant on the judgment of Supreme Court in **Mohan Lal (supra)** has no force as that judgment was revisited by the Supreme Court in **Varinder Kumar Vs. State of Himachal Pradesh**, reported in **(2020) 3 SCC 321** and the investigation in this case had started prior to the judgment given by the Supreme Court in case of **Mohal Lal (supra)**. The ratio in the same is not having binding effect in this case. Rebutting the other submissions made on behalf of the applicant, it is submitted that the applicant has no entitlement for grant of bail. Reliance has been placed on the judgment of this

Court in **Jatin Akash Singh Vs. State of C.G.** passed in **M.Cr.C. No.2235 of 2020** on **09.06.2020**, judgment of High Court of Rajasthan in **Gunjan Dudani Vs. Union of India** reported in **2017 SCC OnLine Raj 3867**, judgment of High Court of Delhi in **Vikash Kumar @ Vikash Sharma Vs. D.R.I.**, reported in **2003 (68) DRJ 79**, judgment of Supreme Court in **State, CBI Vs. Sashi Balasubramanian & Anr.**, reported in **(2006) 13 SCC 252** and the judgment of Delhi High Court in **Govt. of NCT Delhi & Ors. Vs. V.K. Bhardwaj**, passed in **W.P.(C) NO.5116/2014 On 12th January, 2016**. It is prayed that the application be dismissed.

5. In reply, it is submitted by the counsel for the applicant that the applicant is Oria speaking person and having no knowledge of Hindi language even then his statement is written in Hindi, therefore, the statement can not be said to be a voluntary statement given by the applicant. It has not been denied by the respondent side that the complainant and lodger of the FIR is same person, therefore, the principle laid down in **Mohan Lal (supra)** is clearly applicable in this case. The applicant is in jail since more than two years and the trial is not making any progress. The applicant has no criminal antecedents, therefore, it is prayed that he may be enlarged on regular bail.
6. I have heard the learned counsel for both the parties at length and perused the case diary.
7. Considered on the submission and the facts of the case. This

Court has already by previous order in M.Cr.C. No.1407/2019 passed on 12.07.2019 dismissed the application for grant of bail filed by the applicant on merits. The grounds raised at present regarding evidentiary value of the statement given by the applicant under Section 67 of the Act, 1985 can be considered only as a dispute raised by the applicant side because this statement yet to be considered and believed or disbelieved by the trial Court. Section 53 (A) of the Act, 1985 provides that statement made and signed before any officer empowered to investigate the offence can be proved in the trial. Similarly Section 54 of the Act, 1985 provides for presumption regarding possession of the illicit articles.

8. The statement of the applicant under Section 67 mentions that he is aware of Hindu and Oria languages, therefore, his statement is being recorded in Hindi language. Therefore, the evidentiary value of this statement is pending for consideration by the trial Court on which no comment can be made by this Court while deciding the bail application. Hence, the arguments submitted on this ground is without any substance.
9. Another ground raised regarding the applicability of ratio laid down in **Mohan Lal (Supra)** is of no help to the applicant. Case of **Mohan Lal (supra)** was decided on 16.08.2018 by the Full Bench of the Supreme Court and the judgment was authored by the Justice Naveen Sinha. Subsequently in the case of **Varinder**

Kumar (supra) similar Full Bench of the Supreme Court has made it clear that declaration of law in Mohan Lal shall not have any retrospective effect, therefore, the cases arising prior to the judgment in Mohan Lal shall be governed by the law and the principles of law present and in force at the relevant point of time. In this particular case, the seizure of contraband of about more than 6000 Kg. was made from the co-accused persons in the month of June, 2018. Thereafter, the statement of the applicant was recorded under Section 67 of the Act, 1985 on 05.07.2018. Hence, it clearly appears that investigation proceeding that has taken place with respect to the offence and with respect to the statement recorded of the applicant had been prior to the date of 16th August, 2018, when the judgment of **Mohan Lal (supra)** was pronounced.

10. Another ground raised regarding delay in trial is not a good ground, in case of commission of offence of heinous nature and commission of such offence affects the individual as well as society in whole. On the basis of these discussions made herein-above, this Court is of the opinion that present is not a fit case, in which, the applicant should be enlarged on regular bail.
11. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge