

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4308 of 2020

Pankaj Dwivedi, S/o Jaimohan Dwivedi, Aged About 26 Years R/o Gajan, Police Station Rampur, District Satna (M.P.), District : Satna, Madhya Pradesh

---- Applicant

Versus

State Of Chhattisgarh, Through - Station House Officer, Police Station Chilpi, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Respondent

For Applicant	:	Shri Aditya Tiwari, Advocate
For State	:	Smt. Fouzia Mirza, Addl. A.G.

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

Order On Board

15/12/2020

Heard.

1. The applicant is arrested on 21.01.2020 in connection with Crime No.09/2020 registered in Police Station –Chilpi, District- Kabirdham (CG) for alleged commission of offence under Section 20 (B) of the NDPS Act.
2. Case of the prosecution, in brief, is that upon receipt of *mukhbir* information, when the vehicle driven by the applicant was intercepted, in the vehicle, 110 kg *ganja* kept in 30 packets was recovered.
3. Learned counsel for the applicant would submit that the applicant has been falsely implicated. There is no involvement of the applicant. The vehicle was hired by the co-accused and the applicant was only driver of the vehicle. He was not knowing as to what is being carried by the co-accused in the packets. Therefore, it is not a case of any conscious possession of the applicant. He next submits that provisions contained in Section 50 of the NDPS Act have

not been complied with inasmuch as the accused/applicant were not produced before the Magistrate or the Gazetted Officer for their search and the police officer himself searched them. Further argument is that provisions of Section 42 of the Act have not been complied with as it does not specifically name the *mukhbir* from whom the information was received and it is highly doubtful whether it was immediately forwarded to the higher official. Next submission is that there is delay in arrest. According to the papers in the *chalan*, applicant's vehicle was intercepted at 10:30, but, the arrest memo was prepared after about 3 hrs., which shows that the prosecution case is highly doubtful. Learned counsel for the applicant submits that proper weighment was not done as there is no separate weighment of ganja and the packets in which ganja was allegedly kept. Therefore, the weighment of 110 kg includes the weight of the packets also which contained narcotics.

4. On the other hand, learned counsel for the State opposed the bail application by submitting that each and every provisions of the NDPS Act right from Section 42 to Section 57 have been followed. Upon receipt of *mukhbir* information, witnesses were given notices, they were called and in their presence, *mukhbir panchnama* was also prepared. Thereafter, information was immediately forwarded to the higher officials regarding satisfaction that the applicant is carrying narcotics and if the police official does not proceed to the spot immediately, the narcotics may be diverted to another way. It has been stated that one Abhishek Sharma, Constable, had taken the notice personally in the Office of SDO(P) and soon after the applicant was taken into custody, various provisions relating to compliance of Section 50 of the Act, were carried out and *panchnama* to this effect has been prepared in the presence of witnesses, duly signed by the witnesses. Next submission is that the weighment of the entire quantity of 110 kg ganja was done and that this is not illegality. It is next submitted that the complete proceedings which was drawn were brought to the police station along with the accused and FIR was registered and then in compliance of Section 57 of the Act, it was forwarded to the next higher official on that very day. It is submitted that the applicant's plea that he was only the driver of the vehicle was not correct. The vehicle was found to be registered in the name of applicant and in view of Section 35

of the Act, once the applicant is found in possession, there is presumption of guilt and the reverse burden of proof is on the applicant. Lastly, it is submitted that entire proceedings have been drawn in the presence of independent witnesses who, in their case diary statements, have fully supported the entire proceeding.

5. Considering the submissions made by learned counsel for the respective parties, particularly the contents of the charge sheet and the case diary with regard to compliance of various provisions under NDPS Act, it is difficult for this Court to hold that there is reasonable ground to believe that the applicant has not committed the offence alleged against him. Looking to the gravity and nature of allegation and the huge quantity of recovered ganja which is much more than the commercial quantity, present is not a fit case for grant of bail.
6. The application is accordingly rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge