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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4825 of 2020**

- Ritesh Kumar Dangi S/o Mahendra Prasad Dangi Aged About 28 Years R/o Village Godhanpur, Police Station Gandhinagar, District Surguja Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through, Station House Officer, Police Station Gandhinagar, District Surguja Chhattisgarh

----Non Applicant

For the Applicant : Mr. Awadh Tripathi, Advocate

For Non Applicant : Mr. D.K. Tiwari, Deputy G. A.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****19.08.2020**

1. This is third bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court vide order dated 05.02.2019 passed in MCRC No.9911 of 2018 considering prima facie case against him. His second bail application was rejected by this Court vide order dated 21.06.2019 passed in MCRC No.3258 of 2019 considering prima facie case against him.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.244/2018 registered at Police Station- Gandhinagar, District- Surguja (C.G.) for the offence punishable under Section 22(c) of the NDPS Act.
4. Case of the prosecution in brief is that on 06.10.2018 Sub Inspector Devesh Kumar Sahu posted at police station Gandhi Nagar seized 08 pieces of injections Avil (Pheniramine Malete) each containing 40 ml, 53 pieces of injections Rexogesic Buprenorphine each containing 2 ml

from the possession of the applicant. As per RFSL report, buprenorphine was found in the said injections. As per notification dated 18.11.2009, the entire solution will be taken for consideration.

5. Counsel for the applicant submitted that applicant is in jail since last two years. Last witness was examined on 13.12.2019 thereafter trial is withheld due to situation of Corona Virus. In the case in hand, 9 witnesses have been examined, one seizure witness turned hostile. Hence, applicant may be released on bail.
6. On the other hand, learned counsel for the State opposed the bail application. He further submits that two other criminal cases under IPC have been registered against the applicant.
7. This is true that delay in trial and detention period of the accused are material factors for disposal of the bail application filed by the accused. But equally it is also true that seriousness of the offence and impact of granting bail to the accused on society are more material and important factors for disposal of the bail application filed by the accused.
8. Mere turning hostile of some witnesses is itself not a sufficient ground to enlarge the accused on bail.
9. In present scenario it cannot be held that trial Court is responsible for delay in trial.
10. Looking to the above mentioned facts and circumstances of the case, this Court finds that this is not a fit case where the applicant may be released on bail in third round of litigation. Consequently, third bail application of applicant is rejected.
11. In this MCRC the peculiar fact which attracts the attention of this Court is that after rejection of two bail applications by this Court, on 27.06.2020 the Special Judge, NDPS Sarguja, Ambikapur (Shri Alok Kumar) considered the bail application on merits though he rejected the same. It is well settled legal position that when a bail application is rejected by Higher Forum then thereafter the Sub-ordinate Forum can not decide the bail application on merits. Surprisingly, the said Special Judge after considering the merits of the case disposed of the bail application after rejection of the two bail applications by this Court. In fact, the bail application filed before the said Special Judge was not maintainable and it ought to have been rejected on the sole ground of non-maintainability without touching the merits of the case.

12. A Copy of this order be sent to said Special Judge for his guidance.

Sd/-
(Sharad Kumar Gupta)
Judge

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