

HIGH COURT OF CHHATTISGARH, BILASPUR
M.Cr.C.No.4218 of 2020

Bodhram Rathiya, S/o Shri Ghursay Rathiya, aged about 50 years, R/o Village Ghontmar, P.S. Kartala, District Korba (CG)

---Applicant

Versus

State of Chhattisgarh Through Station House Officer, Police Station, Kartala, District Korba (CG)

---Non-Applicant

For Applicant	:	Mr.C.J.K.Rao, Advocate
For Non-applicant	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

20/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
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.52/2020, registered at Police Station-Kartala, District-Korba (CG), for the offence punishable under Section 20A of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter called as 'NDPS Act')
3. Case of the prosecution, in brief, is that 53 plants of ganja containing approximately 5 kg. was recovered from badi owned by the 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 there is no evidence that the applicant has planted or cultivated the prohibited plants and it has been sprouted by natural growth. The quantity of ganja is more than

small quantity but lessor than commercial quantity. The applicant has been arrested on 17.4.2020 and charge-sheet has been filed and therefore, he be released on regular bail.

5. On the other hand, learned counsel for the State would oppose the bail application and submit that ganja has been recovered from badi owned by the present applicant.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. The Supreme Court in the matter of Alakh Ram v. State of U.P.¹ held that in order to prove the offence under Section 20 of the NDPS Act, it must be proved that the accused had cultivated the prohibited plant voluntarily and in substantial quantity and further held that plants sprouted naturally do not amount to cultivation. Para-6 of the report states as under:-

“6. The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the *ganja* plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence either oral or documentary to show that the appellant has a right over the property from which the *ganja* plants were recovered. There is no evidence that the appellant cultivated these *ganja* plants. Having regard to the extent of the property and the number of plants recovered from that the property, it cannot be said that these plants had been the result of cultivation. They may have sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of *ganja* plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.”

1 (2004) 1 SCC 766

8. Taking clue from the aforesaid judgment, at this stage, it cannot be held that the applicant has planted these cannabis plants and it is the matter of evidence to be brought on record during the course of trial.
9. Taking into consideration the facts & circumstances of the case, nature & gravity of offence, pre-trial detention of the applicant, quantity of ganja i.e. more than small quantity but less than commercial quantity and taking the defence of the applicant, this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.
10. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
11. 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.
12. 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 **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