

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.No.4318 of 2020**

- Bandhan Singh S/o Shri Fuderam Yadav Aged About 55 Years
R/o Village Binjhkot, P.S. And Tahsil Kartala, District Korba
Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police
Station Kartala, District Korba Chhattisgarh.

---Non-applicant

For Applicants : Shri C. Jayant K Rao, Advocate

For Non-applicant : Ku. Veena Nair, Dy. Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14.8.2020.**

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 of him on regular bail during trial in connection with Crime No. 36 of 2020, registered at Police Station Kartala, Distt. Korba (CG) for the offence punishable under Section 20(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. Case of the prosecution, in brief, is that, 01 plant of ganja (12

feet) was recovered from the kitchen garden of the present applicant and thereby committed the aforesaid offence.

4. Learned counsel for the applicant submits 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 plant and it has been sprouted by natural growth. He is in jail since 15.3.2020 and trial is likely to take time for its conclusion.

5. On the other hand, learned counsel for the State opposes the bail application and submit that ganja plant has been recovered from the kitchen garden owned by the present applicant.

6. I have heard 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

1 (2004) 1 SCC 766

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.”

8. Taking clue from the aforesaid judgment, at this stage, it cannot be held that the applicant has planted the cannabis plant and it is the matter of evidence to be brought on record during the course of the trial.

9. Taking into consideration the facts & circumstances of the case, nature and gravity of offence, pre-trial detention of the applicant and considering that quantity of narcotic drugs 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