

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRC No. 5872 of 2020**

- Ganga Singh S/o Shri Hoti Lal Aged About 28 Years R/o Nidholikala, Nagla Durjan Para, Police Station Nidholi Kala, District Atta, Uttar Pradesh

---- Applicant

**Versus**

- State Of Chhattisgarh Through Station House Officer , Police Station Kondagaon, District : Kondagaon, Chhattisgarh

---- Respondent

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| For Applicant | : | Mr. Ishan Verma, Advocate         |
| For State     | : | Ms. Fouzia Mirza, Additional A.G. |

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

**Order On Board**

**11/12/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.324/2019 in Special Case (NDPS) No.04/2020 registered at Police Station- Kondagaon, District : Kondagaon, (C.G.) for the alleged commission of offence under Section 20(B) of NDPS Act, 1985.
2. Prosecution case is that upon receipt of *Mukhbir* information, when the applicant was intercepted on road, from the motorcycle, in which, the applicant and co-accused were riding, 23.87 KG of *Ganja* was recovered.
3. Learned counsel for the applicant would submit that the applicant has been falsely implicated and he has not committed any offence. It is argued that the police officer in the rank of ASI, who conducted the investigation, is not competent to draw various proceedings or to investigate the case under the provisions of Sections 42 and 53 of the NDPS Act. Next submission is that the officer who intercepted, serve and drive various proceedings under Section 42 of NDPS Act, has also investigated the case, therefore, it is a case of serious prejudice. Third submission is that the accused were given joint notice, which is violation of Section 50 of the NDPS Act.
4. On the other hand, learned State counsel opposes and submits that the applicant has not raised any specific ground regarding jurisdiction of the

officer, who carried out the investigation. Next submission is that in the present case, narcotics were seized from the motorcycle and not from the personal search, therefore, alleged violation of Section 50 of NDPS Act will not have any impact. Lastly, it is submitted that merely because the same officer conducted the investigation who had carried out proceedings under Section 42 of NDPS Act, the proceedings are not vitiated and no prejudice is demonstrated. It is further submitted that all other proceedings regarding information to the higher officer, preparation of weighment panchnama, use and accumulation of specimen seal, seizure, sending the information to the higher authority and deposit in the *Malkhana*, have been step to step followed. Learned State Counsel would further argue that in such a circumstance, a *prima facie* case is made out against the present applicant because the witnesses in their case diary statement have clearly stated about the seizure of the narcotics from the present applicant.

5. Upon consideration of the submissions made by learned counsel for the parties, as far as first ground with regard to jurisdiction and competence of the investigating officer is concerned, I find that there is no such ground taken in the application. The ground has been developed only during the course of argument which cannot be gone into. The bail application was filed in the month of August, 2020. As far as Section 50 is concerned, considering the present case where the recovery has been made from the vehicle and not from the personal possession of the applicant, on those grounds, it cannot be made a basis to form an opinion that the applicant is not involved in the alleged commission of offence. The aspect of same officer being investigator and having carried out proceedings under Section 42 of NDPS Act, in view of recent judicial pronouncement, does not vitiate proceedings unless prejudice is demonstrated during the course of trial. Upon disclosure of various proceedings drawn by the officer of the police from seizure of the narcotics up to safe custody in the Malkhana, as disclosed from the contents of the case diary, it is difficult for this Court to form an opinion that there are reasonable grounds to believe that the present applicant has not committed the offence. Therefore, bail cannot be granted in view of provision contained in Section 37 (1)(b) of the NDPS Act.

6. The bail application is accordingly rejected.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**