

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 6176 of 2020**

Milan Singh, S/o Shri Amir Sai, aged about 55 years, R/o village Umeshwarpur, Police Chouki Umeshwarpur, Police Station & Tahsil Premnagar, District Surajpur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through – S.H.O., Police Chouki Umeshwarpur, P.S. Premnagar, District Surajpur (C.G.)

----Non-applicant

For Applicant	: Mrs. Meena Shastri, Applicant.
For Non-applicant/State	: Mr. Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****28/09/2020**

- (1) Proceedings of this matter have been taken taken-up through video conferencing.
- (2) The accused/applicant has preferred this bail application under Section 439 of the Code of Criminal Procedure for releasing him on regular bail during trial in connection with Crime No. 58/2020 registered at police Station Police Chouki Umeshwarpur, Police Station – Premnagar, District Surajpur (C.G.) for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985.
- (3) Case of the prosecution, in brief, is that 2 plants of cannabis containing approximately 6.500 kilograms was recovered from the courtyard of the applicant and thereby committed the aforesaid offence.
- (4) Learned counsel for the applicant would submit that the applicant has been falsely

implicated in the crime in question as there is no evidence that the applicant has planted or cultivated the prohibited plants and it has been sprouted by natural growth. He further submits that the quantity of ganja is more than small quantity but lessor than commercial quantity; applicant has been arrested on 16.8.2020 and the trial is likely to take some time for its final disposal and therefore, he is entitled to be released on bail.

(5) On the other hand, learned counsel for the State would oppose the bail application and submit that ganja has been recovered from the courtyard of 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

1 (2004) 1 SCC 766

and sentence of the appellant.”

(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. approximately 6.500 kilograms, which is more than small quantity but less than commercial quantity and taking the defence of the applicant, this Court is of the view that it is a fit case to release the applicant on bail. Accordingly, the bail application is allowed.

(10) Accused/applicant is directed to be released on bail on his executing a personal bond in the sum of Rs. 25,000/- with one surety in the like sum to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given by the said Court till disposal of the trial.

(11) 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 23.03.2020 in the matter of **In Re : Contagion of COVID 19 Virus in Prisons** (Suo Moto 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 the bail bonds earlier, then he will be required to furnish bail bonds.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

