

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5624 of 2020**

- Roshan Beck, S/o Bilyus Beck, Aged About 25 Years R/o Village Okra (Khuthanpara) Police Station And Tahsil Rajpur, District Balrampur - Ramanujanj Chhattisgarh. **---- Applicant**

Versus

- State Of Chhattisgarh, Through The Station House Officer Police Station Ramanujanj, District Balrampur - Ramanujanj Chhattisgarh. **---- Respondent**

MCRC No. 6280 of 2020

- Anil Kumar Jaiswal S/o Lallu Jaiswal Aged About 31 Years R/o Mahuapara, Police Station Rajpur, District Balrampur Ramanujanj Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Ramanujanj, District Balrampur Ramanujanj Chhattisgarh., District : Balrampur, Chhattisgarh

---- Respondent**MCRC No. 6348 of 2020**

1. Kyamdeen Ansari S/o Mo. Suleman Aged About 32 Years Residence Of Khapro , Thana Ranka, District Gadva Jharrkhand.
2. Virendra Kumar S/o Sudama Chaudhari Aged About 22 Years Residence Of Ranka, Thana Ranka , District Gadva Jharrkhand. **---- Applicants**

Versus

- State Of Chhattisgarh Through Police Station Ramanujanj, District Balrampur Ramanujanj Chhattisgarh. **---- Respondent**

For Applicants	:	Shri Jitendra Shrivastava, Shri Pushpendra Kumar Patel, Shri Vikas Pandey, Advocates
For State	:	Smt. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/11/2020**

Heard.

1. The aforesaid three applications are being disposed off by this common order as they arise out of same crime number.
2. The applicants have been arrested on 21.07.2020 on the allegation of having committed offence under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. They moved these applications for grant of bail in

connection with Crime No.113/2020, registered at Police Station- Ramanujganj, District- Balrampur-Ramanujganj (C.G.).

3. A truck carrying 719 Nos. pieces of 100 ml bottles of cough syrup of drugs *codeine phosphate* was intercepted and seized by the police on 21.07.2020 and that vehicle was allegedly driven by applicant Kyamddeen Ansari accompanied with co-accused Virendra Kumar. It is alleged that when Kyamddeen Ansari was taken into custody and his memorandum was recorded, he disclosed that narcotic drug was being transported and supplied to the co-accused Anil Kumar Jaiswal and co-accused Anil Jaiswal was to pay Rs. 99,000/- upon delivery of the cough syrup bottles. It is alleged that when the vehicle reached to the destination, accused Anil Kumar Jaiswal was present there and at that time, police reached and seized Rs. 99,000/- from the possession of the accused Anil Kumar Jaiswal.

As far as applicant Roshan Beck is concerned, he was sitting in a car alongwith Anil Jaiswal. From the memorandum of Kyamddeen Ansari, it has come out that Anil Jaiswal was involved in illegal sale and purchase of narcotic drugs. It was presumed that Roshan was also involved in the case on the basis that Roshan was sitting in the same car. Later on, currency notes of different denominations were seized from the possession of Anil Jaiswal.

4. Learned counsel appearing for applicant Roshan Beck would submit that the only basis of involvement of Roshan Beck is that he was sitting in the car which was being driven by Anil Jaiswal and as Anil Jaiswal was found carrying cash of Rs. 99 thousand, applicant Roshan Beck was also involved. It is not a case where applicant has been found carrying narcotics and on a presumption of personal possession of cash, police arrested applicant Roshan Beck. He next submits that Roshan Beck was present in the vehicle without any reason

but Anil Jaiswal was sitting in the car to serve his purpose. It is clear from the memorandum of the other co-accused that applicant Roshan Beck was not involved in the present case, nor anything stated against him in the memorandum of any of co-accused. Only name of Anil Jaiswal was disclosed in the memorandum of Kyamddeen Ansari. Prosecution case is based on no evidence and therefore, it is urged that present is a case which warrants drawing of satisfaction by this Court. It is further argued that as there are no criminal record and looking to the present incident and material on record disclosed in case diary, he has not committed any offence.

5. Learned counsel appearing for the applicant Anil Jaiswal submits that no prima-facie case is made out against him because in view of provision contained in Section 21 of NDPS Act, of which the applicant is charged with, unless sale is complete, Section 21 would not be attracted because it can not be said that he was involved in the course of transportation or even importing the drugs from other State, much less illegal narcotic drug. Secondly, it is not a case where Anil Jaiswal was found in possession of narcotic drug, but he is involved because one other co-accused Kyamddeen Ansari, in his memorandum, named Anil kumar Jaiswal that he was involved. It is next submitted that recovery of Rs.99,000/- from Anil Kumar Jaiswal was merely a co incidence and it cannot be connected with the case of prosecution that this was to be used for purchasing the narcotic drugs which was being imported by Kyamddeen Ansari, because no such money has been transferred from hands of Anil Jaiswal to co-accused Kyamddeen Ansari.
6. Learned counsel for the applicant/co-accused Kyamddeen Ansari and Virendra submits that Kyamddeen Ansari was only driver of the truck and it is for the prosecution to prove presence of applicant Virendra in the vehicle with

the knowledge that the vehicle driven by the Kyamddeen Ansari was carrying large quantity of narcotic drugs.

Thus, the submissions of learned counsel appearing for all the applicants/accused is that from the material disclosed from the case diary and charge-sheet, satisfaction may be recorded by this Court that there are reasonable grounds to believe that the applicants are not guilty of commission of offence under Section 21(c) of the NDPS Act and they may be granted bail.

7. On the other hand, learned Additional Advocate General opposing grant of bail would argue that as far as Anil Kumar Jaiswal is concerned, the allegations against him is that he was a person who ordered for drugs supply and in this connection, import of drugs from another State have taken place and the drug was being transported to a destination ending with this accused. It is next submitted that when co-accused, the truck driver Kyamddeen Ansari, was taken into custody and his memorandum was recorded, he disclosed name of Anil Kumar Jaiswal that Anil Jaiswal was the person who was to be handed over the quantity of the drugs upon receipts of Rs 99 thousand and later on, when call records were collected, Kyamddeen Ansari was found having contacted, at number of occasions, to Anil Jaiswal on 20th and 21st of July 2020. It is also submitted from that Anil Jaiswal, Rs 99,000/- was seized, therefore, his involvement in alleged offence is prima-facie made out.

Learned State counsel further argue that restricted meaning cannot be attributed to words "purchase, transport" as mentioned in Section 21 of the Act. Any one who is involved in the transportation, purchase, sale in any manner would be guilty of offence of Section 21 of the Act and it is not necessary that this sale should be completed. The transportation of the truck

itself is ordered by Anil Jaiswal and material prima-facie support allegations, therefore, their involvement would be prima-facie made out under Section 21 of NDPS Act.

8. As far as applicant Roshan Beck is concerned, argument of learned State Counsel is that Anil Jaiswal was carrying Rs.99,000/- which was handed over to driver of vehicle which was transporting drugs. Presence of Roshan in that very vehicle in which Anil Jaiswal was traveling with cash also involves Roshan. The applicants are the accused of commission of offence under certain NDPS Act and Section 37 of the Act provides for the considerations in the matter of grant or refusal to grant bail, where allegations of commission of offence under certain provision of NDPS Act. The Apex Court in the case of **Union of India Versus Ram Samujh And Another** 1999 Volume 9 SCC 429, **State of M.P. Versus Kajad** 2001 Volume 7 SCC 673, **Sami Ullaha Versus Superintendent, Narcotic Central Bureau** 2008 Volume 16 SCC 471, **Union Of India Versus Rattan Mallik @ Habul** 2009 Volume 2 SCC 624, **Union of India And Another Versus Sanjeev V. Deshpande** 2014 Volume 13 SCC 1 and **Satpal Singh Versus State of Punjab** 2018 Volume 13 SCC 813, had occasion to consider the scheme applicable in the matter of application for grant of bail against accusation of the NDPS Act. It has been succinctly held that provision contained in Section 37 of NDPS Act sub Section(2) thereof deals with the power of grant of bail and a person alleged to have committed offence under Section of NDPS Act is not only subject to provisions of Section 439 of CrPC, but also subjected to the restriction placed by clause (b) (1) 37 of the Act. It has also been held that apart from affording an opportunity to the Public Prosecutor to oppose the application for such release, where the Public Prosecutor opposes the application, the Court has to be satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The Hon'ble Supreme Court observed that it is manifest that the conditions are cumulative

and not in the alternative. The satisfaction for belief regarding accused being not guilty has to be based on reasonable ground.

9. Keeping in mind the provision contained in aforesaid provision and decisions of the Apex Court, if the case of the present applicants are considered in the light of the material disclosed in the case diary and charge-sheet filed against the applicant, it is found that involvement of the accused K.Ansari and Virendra is based on the accusation that when the truck, in which they were traveling, was intercepted, Kyamddeen Ansari was found driving the vehicle and other co-accused was sitting alongwith him. Kyamddeen Ansari was carrying as many as 719 boxes of narcotic drug bottles. It is huge quantity and not a small quantity to say that it was only kept for the personal possession of the co-accused Virendra. Anil jaiswal has been involved on the basis of memorandum of Kyamddeen Ansari, who was taken into custody, alleging that he was the person whom drugs supply was to be made and he was to pay Rs. 99,000/-. On that very day, Anil Jaiswal was also going on the vehicle and when he was intercepted, he was found possessed of Rs. 99,000/-. In addition, there are call details between Kyamddeen Ansari and Anil Kumar Jaiswal on 20th and 21th July on the date on which vehicle was found in the transportation, intercepted and narcotics seized from the possession of co-accused.

10. However, as far as applicant Roshan Beck is concerned, his involvement is on the basis that he was sitting in the vehicle with Anil Jaiswal. It is not a case that this vehicle was carrying narcotic drug. Except that Roshan was sitting in the vehicle in which Anil Jaiswal was also sitting, there is no other material brought in the charge-sheet against Roshan's involvement. There is no

memorandum of Anil Jaiswal and Memorandum of Kyamddeen Ansari, does not involve Roshan.

11. Submission of learned counsel appearing for the applicant Anil Jaiswal based on reading of Section 21 of NDPS Act, is that unless purchase is complete, the applicant Anil Jaiswal would not be involved.

This argument, does not impress this Court. Punishment for contravention in relation to drugs and preparation is provided under Section 21 of the NDPS Act. It provides that whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transport, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable. According to the quantity found, it is dealt with separately in clauses (a)(b) & (c) of Section 21 of the Act. Manufacturing, sale-purchase, transport import from any State, export to another State are words of wide import. Word “purchase”, would also include a person involved in purchase irrespective of whether the purchase is in the legal sense complete or not. The allegations in present case is that under the order, drugs was to be transported to the end of Anil Jaiswal and he was to pay Rs.99,000/- . Therefore, the argument that Section 21 of the Act would not be attracted unless drug is handed over to Anil Jaiswal and he pays Rs 99,000/-, is liable to be rejected. Otherwise also, present is a case of allegations in which the truck was coming from Jharkhand to Chhattisgarh. The allegations against Anil Kumar Jaiswal is that upon his order, supply of drugs was to be made from Jharkhand to Chhattisgarh. Word “imports inter-states” as provided under the Act is also attracted.”

12. In view of the aforesaid consideration, this Court is unable to record satisfaction that there are reasonable grounds for believing that applicants Anil Kumar Jaiswal, Kyamddeen Ansari and Virendra are not guilty for the commission of offence. Therefore, their applications are to be rejected. Accordingly, bail applications of applicants Anil Kumar Jaiswal, Kyamddeen Ansari and Virendra are rejected.

13. However, as far as applicant Roshan Beck is concerned, looking to the circumstances and the material available, this Court is inclined to record satisfaction that there is reasonable ground to believe that he is not guilty of the said offence. Further, there is no material, that he was named in memorandum of other accused. Accordingly, the bail application of Roshan Beck (MCRC No. 5624/2020) is allowed. It is directed that the applicant Roshan Beck shall be released on bail, on his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties for the like amount to the satisfaction of the Trial Court on the condition that-

- a) he shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) the applicant shall not in any manner, tamper with the prosecution witnesses.

14. Before parting with the case, it has to be clarified that satisfaction recorded as above is only for limited purposes of considering bail application and the trial Court shall not be influenced by this observation in any manner and shall decide the case strictly on the basis of evidence adduced in accordance with the law.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge