

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.6504 of 2020**

1. Jagannath Dalai S/o Shyamson Dalai, Aged About 38 Years R/o Paldaput, P.S. Machkund, Dist. Koraput (Orissa), District : Koraput, Orissa
2. Upendra Dalai, S/o Shri Hari Dalai, Aged About 22 Years R/o Paldaput, P.S. Machkund, Dist. Koraput (Orissa), District : Koraput, Orissa
3. Kamraju Mandi S/o Shri Achul Mandi, Aged About 45 Years R/o Bansmuda, P.S. Machkund, Dist. Koraput (Orissa)., District : Koraput, Orissa

---- Applicants**Versus**

- State Of Chhattisgarh Through P.S. Nagarnar, Distt. Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicant: Shri Prafull Bharat with Shri Keshav Dewangan, Advocate
 For Respondent/State: Smt. Hamida Siddiqui, Dy.AG

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****01/12/2020**

Heard.

1. The applicants have moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.209/2019 registered at Police Station Nagarnar, District Bastar for the offence punishable under Section 20(B) of the NDPS Act. The applicants were arrested on 13-09-2019.
2. Case of the prosecution is that the applicants while going on a jeep were intercepted on the road on the basis of Mukhbir Information regarding transportation of ganja. It is alleged that from the vehicle of the applicants, 41 KG of ganja was recovered.
3. Learned counsel for the applicants would argue that the applicants have

been falsely implicated in this case as they are not owner of the vehicle and the applicant No.1 is driver of the vehicle and other two applicants are gratuitous passengers. It is submitted that the applicants were not having any notice or knowledge regarding presence of ganja in the vehicle, therefore, it cannot be said that the possession was conscious. Next submission of learned counsel for the applicants is that there is violation of Section 42 of the NDPS Act in as much as copy of Rojnamchasanha was not sent to the higher authorities. Further submission of learned counsel for the applicants is that a complete report after arrest as required under Section 57 of the NDPS Act was not sent to the higher authorities which creates serious doubt with regard to compliance of aforesaid provision.

4. On the other hand, learned State counsel submits that violation of Section 42 of the NDPS Act is not made out, because the information was sent on that very day. As far as violation of Section 57 of the NDPS Act is concerned, learned State counsel submitted that the aforesaid provision is directory in nature and only on that ground, it cannot be said that the applicants suffered prejudice which shall vitiate criminal case against them. Learned State counsel submits that as far as compliance of other provisions of the NDPS Act is concerned regarding panchnama of Mukhbir Information, Panchnama Notice under Section 42 of the NDPS Act, compliance of Section 50 of the NDPS Act, preparation of sample, drawal of sample, seizure after weighment and safe custody is prima facie available on the basis of various documents in this regard prepared by the Investigating Officer in the presence of independent witnesses who have also stated in the case diary statements regarding compliance of various provisions before effecting seizure of ganja from the vehicle which was being driven by the applicant No.1 and the applicants No.2 & 3 were sitting there. Therefore, the applicants are presumed to have personal knowledge that the vehicle, in which, they were travelling, was carrying ganja.

5. After hearing learned counsel for the parties, on prima facie consideration, it appears that the applicant were intercepted while going in the vehicle and it was searched, 41 KG of ganja was found. When notice was given to the applicants by the police authority, who intercepted the applicants, they have not come out with any explanation or any valid authority for such possession. The contraband ganja was kept in two sacks and it is not very small thing. Prima facie Section 42 of the NDPS Act appears to have been complied with. As far as violation of Section 57 of the NDPS Act is concerned, only on this ground when other compliance prima facie appears to have been done, it could not be said that there are reasonable grounds to believe that the applicants are not guilty of alleged commission of offence. Therefore, in view of the provision contained under Section 37(1)(b) of the NDPS Act, the present is not a fit case for grant of bail.

6. Accordingly, the bail application is rejected.

Certified copy as per rules.

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