

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.7672 of 2020

1. Bedabyas Das S/o Dandapani Das Vaishnav Aged About 25 Years R/o Village Amabajhari (Sunajhari), Police Station Boudh, District Boudh, Odisha
2. Nirmal Bastiya S/o Puranchand Bastiya Aged About 24 Years R/o Village Ghantapali, Police Station Kantamal, District Boudh, Odisha ---- **Applicants**

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Chilfi,
District Kabirdham, Chhattisgarh ---- **Respondent**

For Applicants	:	Shri Siddharth Ray, Shri Satyajeet Rout and Shri Dhashrath Prajapati, Advocates
For Respondent/State	:	Shri Lalit Jangde, Dy. G.A.

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

Order On Board

03/12/2020

Heard.

1. The applicants have been arrested in connection with Crime No.28 of 2020 registered at Police Station- Chilfi, District Kabirdham (CG) for the alleged commission of offence under Section 20(B) of Narcotics Drugs and Psychotropic Substance Act.
2. Case of the prosecution is that while the applicants were going on vehicle, they were intercepted on the basis of Mukhbir information and it is alleged that from the possession of the applicants, more than 20 kg. ganja was seized.
3. Learned counsel for the applicants would submit that the applicants have been falsely implicated and they have not committed any offence and false seizure has been made. They would further submit that the applicants are in jail since 08.07.2020, investigation is complete and charge-sheet has been filed. The applicants are not likely to flee away nor likely to commit offence because there is no criminal antecedent. They would further submit that mother of applicant No.1/ Bedabyas Das is suffering from Cancer. The applicants are ready to abide by any condition including appropriate bail

bond that may be furnished by the applicants. Therefore, the applicants may be granted bail.

4. On the other hand, learned State counsel opposes and submits that a prima facie case is made out against the applicants because upon receipt of Mukhbir information, proceedings under Section 42 of NDPS Act were duly drawn by the Police Officer and then he reached the spot where the vehicle was intercepted and in presence of witnesses, the applicants were duly served, Section 50 of NDPS Act was complied with and then from the vehicle, more than 20 kg of ganja was recovered, which was duly weighed and identified as ganja in presence of witnesses. The proceedings after coming to the Police Station resulted in lodging of FIR and information regarding the same was sent to the higher Officer within 4 days. Therefore, the provision of NDPS Act has been substantially complied with and entire proceedings are supported by the case diary statement of independent witnesses.
5. Having considered the submission of learned counsel for the parties, though charge-sheet has been filed, only on that ground, bail may not be granted in a case where the accused is alleged to be found in possession of more than 20 kg. of ganja because in such cases, the Court is required to examine the case under mandate of Section 37(1)(b) which ordains that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for offences under Section 19, Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless, amongst other thing, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.
6. Adopting the said approach, with reference to the material disclosed from the diary and that the seizure is based on Mukhbir information and the proceedings are said to be drawn in the presence of independent witnesses, this Court is unable to record satisfaction that there are reasonable ground for believing that the applicants are not guilty of such offence. Even if this Court is prepared to accept the submission that the applicant is not likely to commit any offence while on bail, as the first part of the mandatory requirement of law with regard to the satisfaction that there are reasonable ground for believing that the accused is not guilty of offence alleged, bail

cannot be granted. It is settled legal position in view of plethora of judgment of the Supreme Court noted by this Court in the cases of **Anil Kumar Jaiswal Vs. State of Chhattisgarh in M.Cr.C. No.6280 of 2020 decided on 18.11.2020**, **Kyamddeem Ansari & another Vs. State of Chhattisgarh in M.Cr.C. No.6348 of 2020 decided on 18.11.2020** and in the case of **Rahul Kumar Tolwani Vs. State of Chhattisgarh in M.Cr.C. No.5090 of 2020 order dated 26.11.2020**, that in such cases where the accused alleged to be possessed of commercial quantity, the principle embodied under Section 37(1)(b) of the NDPS will have to be applied and unless the satisfaction as required therein is arrived at, bail could not be granted. Thus, the rejection of bail in such matter is rule and grant is an exception subject to the condition embodied, as discussed herein above.

7. In view of the above discussion, in the light of material disclosed before this Court, present is not a fit case for grant of bail, the bail application is therefore rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge