

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1083 of 2021

- Kaddi @ Raees Ali (Wrongly recorded in order sheet as Kaddi @ Raheem Ali) S/o Fakir Ali, Aged About 25 Years, R/o R. D. A. Building, Opposite to Water Tank, Boriya Khurd, P.S.- Tikrapara, District - Raipur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Moudhapara, District Raipur Chhattisgarh

----Non-applicant

For Applicant – Shri Shubham Tripathi, Advocate.

For Non-applicant/State –Smt. Hamida Siddiqi, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

10-06-2021

1. Heard on the application filed under Section 439 of the Cr.P.C. This is first bail application before this Court filed by the applicant for grant of regular bail. The applicant has been arrested on 26-01-2021 in connection with Crime No.15/2021 registered at P.S. - Moudhapara, District Raipur, Chhattisgarh for the offence under Section 21 (b) of the N.D.P.S. Act.

2. It is submitted on behalf of the applicant that the applicant has been falsely implicated in this case. The case had been of small quantity of narcotic substance and therefore, the offence should have been registered under Section 21(a) of the N.D.P.S. Act. which is wrongly registered under Section 21(b) of the N.D.P.S. Act. Learned counsel for the applicant places reliance on the order passed by the coordinate Bench dated 25-03-2021 in MCRC No.1749 of 2021 and order dated 10-11-2020 passed in MCRC No.3733 of 2020, in which in similar cases accused persons were benefited with grant of bail.

3. Learned counsel for the State/non-applicant opposes the application and submits that 17 bottles of Onerex Codeine Phosphate syrup of 100 ml.

Each, total 1700 ml., i.e., 1.7 kg. syrup has been seized in this case, therefore, it is not a case of small quantity, on the contrary it is a case of commercial quantity according to the Note No.4 of the Notification specifying small quantity and commercial quantity. In MCRC No.5181 of 2016, order dated 09-12-2016 it has been held by the coordinate Bench of this Court that total mass of the mixed mixture of Salt and Syrup has to be taken into account. It has been similarly held by the coordinate Bench of this Court in MCRC No.2235 of 2020, order dated 09-06-2020. It is further submitted that in the case of **Hira Singh and another Vs. Union of India and another**, 2020 SCC OnLine SC 382, it has been held that in case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances. Therefore, this case certainly is with respect to the possession of commercial quantity of the narcotic substance. Therefore, on the basis of this ratio the applicant is not entitled for grant of bail.

4. Heard learned counsel for the parties and perused the case diary.

5. The prosecution case is this, that 17 bottles of Onerex Codeine Phosphate Syrup containing 100 ml. each was seized from the possession of this applicant. The prohibited drug in this medicine is codeine phosphate. The notification describes 10 grams of this substance as small quantity and 1 kg. and above as commercial quantity. In view of the ratio laid down by Hon'ble the Supreme Court in case of **Hira Singh and another Vs. Union of India and another** (supra), the whole quantity of the syrup has to be taken into account as the narcotic substance or psychotropic substance which is 1.7 liters.

6. Considered on the submissions. In this case, the bottles of syrup that have been seized contained medicine in liquid form and the quantity of that

liquid is 1.7 liters. The notification specifying the small and commercial quantity mentions the quantity in grams only, therefore, in that case, the quantity should have been weighed to find out exact weight of the liquid containing narcotic substance in possession of this applicant. Hence, the quantity of the narcotic substance in possession of the applicant was in small quantity or in quantity lesser than the commercial quantity or commercial quantity, this question remains unanswered. It appears that this applicant does not have any criminal antecedent and he is in detention since about five months and there is likelihood of delay in trial, therefore, I feel inclined to allow this application.

7. Consequently, this application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail is hereby allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court, for his appearance as and when directed.

8. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge