

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1353 of 2021**

- Dhanraj Singh Patel S/o Ramkrupal Patel, Aged About 38 Years, R/o Village Kaubra, Police Station Raipura, District Chitrakoot, Uttar Pradesh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Gourela, District Gourela Pendra Marwahi Chhattisgarh

---- Respondent

For Applicant	: Shri Lukesh Kumar Mishra, Advocate
For Respondent/State	: Shri Ajay Kumrani, PL

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**01.04.2021**

1. Applicant has preferred this application under Section 439 CrPC for grant of regular bail as he has been arrested in connection with Crime No.175 of 2020 registered at Police Station Gourela, District-Gourela Pendra Marwahi, CG for the offence punishable under Section 20(b) of the NDPS Act.
2. Case of the prosecution, in brief, is that on 19.09.2020 while performing patrol duty near the Kariyam Barrier, District Bilaspur, the Police have stopped one Bolero bearing No.UP 96E 2015 in which two persons ie applicant and co-accused were travelling. On suspicion, the Police searched the vehicle and recovered 40 Kg Ganja from the said Bolero vehicle. After completion of proceedings, offence under Section 20(b) is registered against them.
3. Learned counsel for the applicant submits that the proceedings of investigation from the inception was contrary to law. After arrest of the applicant, entire proceeding has been drawn by the Police. He further argued that from the time mentioned in the Dehati Nalishi, it is clear that allegation levelled against appellant is false. Referring to seizure memo and final report,

he submits that alleged contraband said to be seized from the vehicle contains leaves, stems and seeds, whereas, as per the definition given under Section 2 (iii) (b) of the Act of 1985, it is the flowering or fruiting tops only to be taken into consideration for assessing quantity of contraband seized from the possession of persons carrying/transporting it. There is non-compliance of Section 50 of the Act of 1985.

4. In support of his submissions, learned counsel for the applicant places reliance in cases of **Bhujang Siddaram Munce Vs State of Karnataka**, decided on 2019 June, 19; **KK Reji Vs State By Murdeshwar Police Station, Karwar**, in Criminal Appeal-1719 of 2003 decided on July 20, 2009. and **Abdul Aleem Vs Intelligence Officer, Narcotic Control Bureau, Bangalore Zonal Unit**, in Criminal Petition-9319 of 2016 decided on September 15, 2020.

5. Shri Ajay Kumrani, learned Panel Lawyer for the State opposing the submission made by learned counsel for the applicant, submits that applicant has been found in illegal possession of 40kgs Ganja, which he was carrying in Bolero vehicle. Police intercepted the vehicle and on search of Bolero, they found 40 kg Ganja. On the basis of it, case was registered and entire proceedings have been drawn against the present applicant and other persons. He submits that ground raised by learned counsel for the applicant with regard to non-compliance of provision under Section 50 of the Act of 1985 has no force as the said provisions are not applicable in this case. Ganja has not been recovered from the personal possession of applicant, but from the vehicle. He submits that procedure as provided under the Act has been followed, hence he is not entitled for the benefit under Section 439 of the CrPC at this stage.

6. I have heard learned counsel for the parties.
7. Total 40 kg contraband ganja was seized from the vehicle. The citations relied upon by the learned counsel for the applicant are after completion of trial, upon appreciation of evidence available on record (except **Abdul Aleem**).
8. In case of **Abdul Aleem** (supra), and **KK Rejji** (supra), ground raised by the appellant therein was with regard to jurisdiction of Court, which is not the ground raised for consideration in the instant case.
9. Taking into consideration nature of allegations, quantity of Ganja recovered, I do not find it a fit case to enlarge the applicant on bail. Accordingly, application is dismissed.
10. At this stage, learned counsel for the applicant submits that liberty may be granted to repeat the bail after examination of important witnesses. The applicant can approach this Court after examination of important witnesses.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE