

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1386 of 2021

- Yogesh Dhankar S/o Mohan Lal Dhankar, Aged About 33 Years, R/o Tarbahar Indira Colony, Police Station Tarbahar, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station - Chilfi, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

----Non-applicant

For Applicant – Mr. Sourabh Dangi and Ms. Aditi Singvi, Advocates.
For Non-applicant/State – Mr. Sameer Uraon, Govt. Advocate.

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 18-01-2021 in connection with Crime No.05/2021 registered at P.S. - Chilfi, District Kabirdham, Chhattisgarh for the offence under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act.

2. It is submitted on behalf of the applicant that the applicant has been falsely implicated in this case. He is in jail since 18-01-2021. The applicant was employed as driver of the vehicle and he had no connection with the substance that was being transported in the car. The contraband seized does not belong to this applicant. Hence, the case against him is totally false. Therefore, it is prayed that he may be granted bail.

3. Learned counsel for the State/non-applicant opposes the application and submits that 1500 vials of Buprenorphine Injection IP (Rexogesic) 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 story of the prosecution is this, that police personnel of Police Station Chilfi, District Kabirdham stopped the vehicle bearing registration No. CG 10 AN 3820 which was occupied by two persons including this applicant. A seizure of 1500 vials of Buprenorphine Injection IP (Rexogesic) was made by the police from this applicant and the co-accused person. Total quantity was calculated to be 3.00 liters. The seized medicine has content which is prohibited under the N.D.P.S. Act.

6. Considered on the submissions. In this case, the medicine that has been seized contained medicine in liquid form and the quantity of that liquid is 3.00 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