

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 130 of 2021

1. Bhim Singh Kawasi S/o Ganga Kawasi, Aged About 27 Years R/o Dev Kupli Budadi P.S. Sukma, District Sukma, Chhattisgarh.
2. Limbu Mandawi S/o Hadma Mandawi, Aged About 30 Years R/o Kawra Kopa P.S. Sukma, District Sukma, Chhattisgarh.
3. Sitaram Korram S/o Lacchu Ram Korram, Aged About 32 Years R/o Permaras P.S. Tongpal, District Sukma, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh Through P.S. Tongpal, District Sukma,
Chhattisgarh.

---- Respondent

For Applicants	: Shri Vikas A. Shrivastava, Advocate.
For Respondent/State	: Mr. Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

9-3-2021

Heard.

1. This criminal revision petition is directed against the order dated 2.2.2021, by which the application under Section 167(2) of the Cr.P.C. filed by the applicants was rejected.
2. Learned counsel for the applicants submits that the impugned order is erroneous, illegal, improper and incorrect. The applicants have been charge-sheeted for the commission of offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') regarding possession of quantity of ganja which was more than small quantity but less than commercial quantity and the maximum punishment prescribed is 10 years and fine. Hence, the case of the applicants was covered under proviso of Section 167(2)(ii) of the

Cr.P.C. and they were entitled for grant of bail after 60 days of their detention during the pendency of investigation. However, the application was duly filed after completion of 90 days in detention. Learned Special Court has erroneously held that the case against the applicants is of commercial quantity and therefore, the applicants had no entitlement for default bail. The impugned order is not sustainable. Hence, it is prayed that the revision petition be allowed and the applicants be granted relief.

3. Learned counsel appearing for the respondent/ State opposes the submissions so made and submits, that although there is separate seizure made from applicants No.1, 2 and 3 but the combined quantity of the contraband seized was 23.060 kg of ganja, which is a commercial quantity. Section 36A(4) of the NDPS Act provides that a Special Court has power to keep an accused in detention in remand up to 180 days and according to the proviso of the same section such period of detention in remand can be extended beyond the period of 180 days which may be up to one year. Therefore, the learned Special Court has not committed any error in rejecting the prayer for default made by the applicants. Hence, the revision petition be dismissed.
4. Heard counsel for both the parties and perused the documents present.
5. According to the prosecution case, these applicants were apprehended by the police station Tongpal, District Sukma who were traveling in two motorcycles. The seizure of 12.460 kg of ganja was made from applicants No.1 and 2 and another seizure of 10.600 kg of ganja was made from applicant No.3. The applicants were arrested on the same day and they were send to the judicial remand on 31.10.2020. The applicants moved an application under Section 167 (2) of the Cr.P.C. on 2.2.2021 praying for default bail, which was rejected by the impugned

order.

6. Considered the submissions. The offence in Crime No. 34 of 2020 has been registered jointly against all the applicants. Although, there is seizure made in part from applicants No.1 and 2 and from applicant No.3 and the quantity of ganja in each of the two seizure memos would appear to be more than small quantity and less than commercial quantity. But it being one crime number, the case of prosecution is to show that all the applicants were jointly active in transporting the contraband. Hence, the total quantity of ganja seized in the joint activity of all these applicants is 23.060 kg of ganja, which is definitely a commercial quantity.
7. It being so that the case against the applicants is covered under Section 20 (b)(ii) (C) of the NDPS Act, in which the prescribed punishment is not less than 10 years of RI which may extend to 20 years and fine shall not be less than Rs.1,00,000/- but may extend to Rs.2,00,000/-, therefore, in this case the proviso under Section 167(2)(i) of the Cr.P.C. shall be applicable and the maximum period of detention authorized under this provision shall be of 90 days. The applicants moved an application on 2.2.2021 on that day they had completed 94 days in detention, praying for default bail.
8. Section 36A(4) of the NDPS Act is as follows:

'36A. Offences triable by Special Courts.--(1) xxxx

(2) xxxxx

(3) xxxxx

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to

"ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.'

9. The submission of the State counsel appears to have force, as one of the categories of the offences mentioned in the provision above-mentioned includes offences involving commercial quantity, therefore, wherever there is mention of 90 days in Section 167(2) of the Cr.P.C. that shall be construed as 180 days. Hence, in this case the right to default bail had not accrued in favour of the applicants on the date they have filed the application under Section 167(2) of the Cr.P.C. Therefore, this revision petition is dismissed at motion stage.

10. Accordingly, the revision petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi