

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1850 of 2020

1. Ajay Kumar Siyaram Singh, Aged About 26 Years R/o Village Bharapur (Wrongly Mentioned As Bhaspur In The Order Sheet), Police Station Ailau, District : Mainpuri, Uttar Pradesh
2. Arun Kumar, S/o Jagdish Kumar Banjara, Aged About 29 Years R/o Village Bharapur (Wrongly Mentioned As Bhaspur In The Order Sheet), Police Station Ailau, District : Mainpuri, Uttar Pradesh

---- Applicants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Chilphy (Wrongly Mentioned As Chilpy), District Kabirdham Chhattisgarh

---- Respondent

For Applicants	:	Mr. Dharmesh Shrivastava, Advocate.
For State	:	Ms. Fouzia Mirza, Additional A.G.

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

Order On Board

25/02/2021

Heard.

1. The applicants have been arrested in connection with Crime No.25/2019 in Special Case No.349/2020 registered at Police Station- Chilphy, District : Kabirdham, (C.G.) for the alleged commission of offence under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Prosecution case is that the applicants were found carrying 31.5 KG of Ganja.
3. Learned counsel for the applicants would submit that in the present case, there is no compliance of Section 42 (2) of the NDPS Act as copy of *Rojnamcha* has not been forwarded to higher authority. Next submission is that the independent witnesses of the prosecution have turned hostile and not supporting the case of the prosecution. It is further submitted that the applicants are in jail since 11.12.2019 and more than one year has lapsed, therefore, at this stage, the applicants may be granted bail.

4. On the other hand, learned State counsel opposes and submits that the copy of *Mukhbir Panchnama* prepared in presence of two witnesses and statement containing belief as to why search warrant could not be obtained, both were sent to the higher police officer. Learned State Counsel would further argue that in the present case the Investigating Officer is yet to be examined and it is settled legal position that if the statement of Investigating Officer is reliable, conviction may follow. Lastly, it is submitted that unless the satisfaction is recorded under Section 37(1)(b) of NDPS Act, only on the ground of delay bail cannot be claimed.
5. I have heard learned counsel for the parties and also gone through the contents of the case diary. On *prima facie* considerations, the submission of learned counsel for the applicants that there is no compliance of Section 42(2) of NDPS Act, is not borne out from record because it is found from the charge sheet that *Mukhbir Panchnama* prepared under Section 42(2) of NDPS Act in the presence of two witnesses was forwarded by the Station House Officer along with memo as to why search warrant could not be obtained, in the presence of two witnesses, to Sub-Divisional Officer Police Station- Chilphy on 11.12.2019 itself and all the proceedings of interception, search and seizure are stated to have been drawn subsequently. Further though independent witnesses may not have supported the case of the prosecution, Investigating Officer is yet to be examined and it is well settled legal position that if the statement of the Investigating Officer is reliable, conviction may follow. True it is that the applicants are in jail since 11.12.2019 and trial has not been concluded but that may not be a ground for grant of bail in view of bar created under Section 37(1)(b) of NDPS Act. Further more, the period of under trial is not so much so that only on that ground bail should be granted to the applicants without considering anything more. This aspect was examined by this Court in the case of **Punit Ram Pandey & Ors. v. State Of Chhattisgarh** in MCRC No.1158 of 2020 following the directions issued by the Hon'ble Supreme Court in its judicial pronouncement in the case of **Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and ors.** (1994) 6 SCC 731.
6. Therefore, this Court is unable to record satisfaction that there are reasonable ground for believing that the applicants are not guilty of commission of offence.

7. The bail application is accordingly rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Ravi