

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC No. 2397 of 2021

Yudhisthir Mehar S/o Gahadu Mehar, Aged About 47 Years, R/o -village Chichaiguda, Thana Junagarh, District -Kalahandi, (Odisha).

---- Applicant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station -Bagbahara, District -Mahasamund, Chhattisgarh.

--- Respondent

For Applicant	: Mr. Vikash Pradhan, Advocate.
For Respondent-State	: Mr. Rakesh Sahu, PL.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

05/04/2021

Heard.

1. This is first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to applicant, who has been arrested in connection with Crime No.277/2020, registered at Police Station -Bagbahara, District -Mahasamund, (C.G), for the offence under Section 20 (B) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').
2. Case of the prosecution, in brief, is that on 15.12.2020, Inspector of Police Station Bagbahara was checking the vehicles at N.H353 Main Road Pithowra Chowk, he stopped one motorcycle, on which three persons were travelling namely Yudhisthir Mehar (present applicant), Bhuraram Megwal and Bhagirathi Ram Bishnoi, carrying two bags with them. During search total 25 kg contraband (Ganja) was recovered from the said bags in their possession in presence of witnesses. Based upon which they are arrested and aforementioned crime is registered against them.
3. Learned counsel for the applicant submits that Investigating Officer who investigated the crime, is not competent to investigate the offence under Section 20 of the NDPS Act. As per amended notification issued on

30.10.2019, amending earlier notification dated 14.11.1985, Investigating Officer in such cases should be above the rank of Inspector, whereas, in the instant case, Investigating Officer is an Inspector, hence, entire investigation is vitiated. In support of this contention, he places his reliance on the judgment passed by Hon'ble Supreme Court in case of **Tofan Singh vs. State of Tamil Nadu** reported in **(2013) 16 SCC 31**. He further submits that there is non-compliance of provisions of Section 50 of NDPS Act, as the search of applicant has not been done before the Gazetted Officer or Magistrate, but Police Officers themselves have conducted search of applicant and other co-accused persons. In support of this contention, he places his reliance on judgment dated 05.09.2018 passed by Hon'ble Supreme Court in CRA/459/2017, judgment dated 20.08.2019 passed in CRA/1206/2013 & judgment dated 29.10.2010 passed in CRA/943/2005. As there is non-compliance of mandatory provisions of NDPS Act, investigation itself is vitiated. Hence, he may be released on regular bail.

4. On the other hand, learned State Counsel opposes the submissions made by learned counsel for applicant and submits that Notification dated 30.10.2019 relied upon by learned counsel for the applicant is not applicable in this case because said notification deals with the powers of the officers of Central Bureau of Narcotics, Junior Intelligence Officer in Narcotics Control Bureau, Central Board of Indirect Taxes & Customs, Directorate of Revenue Intelligence, Central Economics Intelligence Bureau and not with the powers of State Police. The powers of State Police under Section 42 of NDPS Act are notified on 14.11.1985, wherein for the Police Department the Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police, Assistant

Superintendent of Police, Inspector, Sub-Inspector, Asst Sub Inspector have been notified within their respective jurisdiction, hence, submission made by learned counsel for the applicant that Investigating Officer who investigated the crime is not competent to investigate the offence under Section 20 of the NDPS Act is not correct. Learned State counsel further submits that notice under Section 50 of NDPS Act has been given to applicant and other co-accused persons informing them about their rights to be searched before the Magistrate or Gazetted Officer and on their consent they were searched by Police Officer itself. For the search of motorcycle and bag the provisions of Section 50 will not apply. He submits that entire proceeding has been drawn strictly in accordance with the provisions of NDPS Act. Hence, applicant is not entitled for benefit under Section 439 of Cr.P.C.

5. Heard learned counsel for the parties.
6. So far as first submission made by learned counsel for applicant based on Notification dated 30.10.2019 is concerned, perusal of said notification would show that it talks about the officers of department of Central Bureau of Narcotics, Junior Intelligence Officer in Narcotics Control Bureau, Central Board of Indirect Taxes & Customs, Directorate of Revenue Intelligence, Central Economics Intelligence Bureau for exercising their powers under Section 42 & 53 of NDPS Act. Notification issued by State Government conferring powers under Section 42 includes Inspector, Sub-Inspector and Assistant Sub-Inspector. Hence, submission made by learned counsel for applicant that Investigating Officer who conducted investigation in the instant case was not competent is not sustainable.
7. So far as second submission with regard to non-compliance of provisions of Section 50 of NDPS Act is concerned, perusal of case diary would show

that the Police had given notice under Section 50 to present applicant and other co-accused persons on 15.12.2020 and they have given their consent to their own search and also the bags carried by them in presence of witnesses by the Police Officer. They have been searched in presence of two witnesses namely Damodar Baghel and Suraj Tandi. The Case law relied upon by the learned counsel for the applicant is on different facts. In CRA No.459/2017 the co-accused person therein has stated that he wanted his search in presence of Gazetted Officer and he has been searched by the Gazetted Officer. The Hon'ble Supreme Court in case of CRA No.459/2017 held that it does not vitiate investigation. In case of CRA No.943/2005 also held that it is mandatory for Investigation Agency to inform and bring to his knowledge that he may choose for his personal search either before the Magistrate or Gazetted Officer.

8. In case at hand, applicant and other co-accused persons have been made aware about their rights, they gave their consent to be searched in presence of witnesses by the Police Officers. In the given facts of the case, there is prima facie proper compliance of Section 50 of NDPS Act.
9. Considering the entire facts and circumstances of the case, nature of allegations, material available in the case diary, total quantity of contraband (Ganja) recovered from the possession of applicant and other co-accused persons, I do not find it a fit case to enlarge the applicant on regular bail.
10. Accordingly, bail application is rejected.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-