

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 2047 of 2021**

1. Dipak Manjhi, S/o. Vijay Manjhi, aged about 32 years, R/o. Village Jamguda, Police Station R Udaygiri, District Gajpati, Odisha.
2. Jusiya Malik, S/o. Lagisa Malik, aged about 34 years, R/o. Manikpur, Police Station R Udaygiri, District Gajpati, Odisha.

---- Applicants**Versus**

State of Chhattisgarh, Through : Police Station Komakhan, District Mahasamund, Chhattisgarh.

---- Respondent**AND****M.CR.C. No. 2855 of 2021**

1. Manoj Nayak, S/o. Umesh Nayak, aged about 43 years, R/o. Village-Saddu, Thana- Mowa, District- Raipur, Chhattisgarh.
2. Amit Senapati, S/o. Rafel, aged about 40 years, R/o. Village- Saddu, Thana- Mowa, District- Raipur, Chhattisgarh.
3. Sanju Manjhi, S/o. Tuni Manjhi, aged about 29 years, R/o. Village-Goibandhu, Thana- Padampur, District- Rayagada, Odisha

---- Applicants**Versus**

State of Chhattisgarh, Through : Station House Officer, Police Station Komakhan, District Mahasamund, Chhattisgarh.

---- Respondent

For Applicants (in M.Cr.C. No.2047 of 2021 : Mrs. Kiran Jain, Advocate

For Applicants (in M.Cr.C. No.2855 of 2021 : Mr. Vikas Pradhan, Advocate

For Respondent/State : Mr. Ashish Tiwari, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****25/06/2021**

1. Both the bail applications are heard and decided together by this common order as they are arising out of the same crime number and

the incident.

2. These are the first bail applications filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants, who have been arrested in connection with Crime No.159/2020, registered at Police Station – Komakhan, District – Mahasamund (C.G.) for the offence punishable under Section 20-B of Narcotics Drugs and Psychotropic Substance Act.
3. It is submitted by the learned counsel for the applicants (in M.Cr.C. No. 2047 of 2021) that the applicants are innocent and they have been falsely implicated in this case. It is a case in which seizure of contraband was made from two cars, therefore, there should have been two cases, but seizure from different cars have been clubbed to make a single case of huge quantity. The Investigation Officer has not followed the procedure for investigation provided under the N.D.P.S. Act and Section 57 of N.D.P.S. Act has not been complied with. Further the investigation shows that contraband seized in both the cases were mixed to make homogeneous mixture, which is suggestive of false implication of the applicants. Therefore, it is prayed that the applicants may be enlarged on regular bail.
4. It is submitted by the learned counsel for the applicants (in M.Cr.C. No. 2855 of 2021) that exact 20 Kg of Cannabis has been seized from the possession of the applicants, which is not a commercial quantity as held by the High Court of Odisha in *BLAPL No. 3923 of 2020 decided on 13.08.2020*, in which it was held that when the quantity of Ganja is exact 20 Kg. it is not a commercial quantity. The applicants have also relied upon the judgment of High Court of Kerla at Ernakulam in case

of *Mushaque Ahammed & Muthu & Anr. Vs. The Sub-Inspector of Police & Anr. Decided on 21st of May, 2020*. The counsel has also relied upon the judgment of Supreme Court in case of *Amarsingh Ramjibhai Barot Vs. State of Gujrat*, reported in *AIR 2005 SC 4248*. Hence it is prayed that the applicants be enlarged on regular bail.

5. On the other hand, learned counsel for the State opposes both the bail applications and the submissions made in this respect. It is submitted that it is a clear case of seizure of commercial quantity of Cannabis that these applicants were transporting along with other co-accused persons. All the applicants in both the applications are domicile of Odisha, therefore, in case they are released on bail, they may not be available for trial, before the trial Court. Hence, it is prayed that both the bail applications may be rejected.
6. I have heard the learned counsel for both the parties and perused the case diary.
7. As per the prosecution case, seizure of 50 Kg. Ganja was made from the Car No. HR-26-AT-7550 and Car No. OR02-AV-7808 from the possession of the applicants in both the cases and others, which were kept in 33 packets in both the cars. The seizure memo shows joint possession.
8. Considered on the submissions. As there is joint seizure is made from all the applicants, hence, the grounds raised that seizure of only 20 Kg. Ganja made from the applicants (in M.Cr.C. No.2855 of 2021) requires to be established in defence. The non-compliance of provisions of N.D.P.S. Act is subject to scrutiny by the trial Court itself. At present, this Court is of the view that it is a case of transportation of huge

quantity of Ganja, which is commercial quantity, hence, for this reason, this Court is of the opinion that present is not a fit case, in which, the applicants should be enlarged on regular bail.

9. Accordingly, both the bail applications filed under Section 439 of the Cr.P.C. are rejected.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram