

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3926 of 2021

Order reserved on: 13/08/2021

Order delivered on: 14/09/2021

- Premanand Bhadra, S/o Vishnu Bhadra, Aged About 35 Years, Resident of Satyam Goda, Maha Kali Hardware, Police-Station-Kalimela, District-Malkangiri, Odisha.

---- Applicant

Versus

1. Directorate of Revenue Intelligent (DRI) Nagpur Regional.
2. State of Chhattisgarh Through Collector, Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Vikash Pradhan, Advocate.
For Respondent No.1-DRI:		Mr. Ramakant Mishra, Assist. S. G.
For Respondent No.2	:	Mr. Samir Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

14/09/2021

1. This is the second bail application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. His first application MCRC No.986 of 2019 vide order dated 12.7.2019 was dismissed on merits.
2. This bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.F.No.DRI/MZU/NRU/INT-87/2018 registered at Police Station–Directorate of Revenue Intelligence(DRI), Nagpur(MS) for the offence punishable under Sections 8(c), 20, 28, 29 of NDPS Act.

3. It is submitted by the learned counsel for the applicant, that the circumstances have changed in favor of the applicant. The witnesses of search and seizure have been examined in the trial and they have turned hostile. It is also submitted that in the earlier application this Court held that the applicant has made confessional statement before the Officer of DRI(Directorate of Revenue Intelligence) which may have some evidentiary value. The Supreme Court has in the case of Tofan Singh v. State of Tamil Nadu, reported in (2021) 4 SCC 1 held that the Officer of Directorate of Revenue Intelligence is a Police Officer, therefore, any confessional statement made in his presence by an accused is not an admissible evidence according to the bar under Section 25 of the Indian Evidence Act. The applicant has also relied on the order of Bombay High Court in the **Bail Application No.198/2019** between the parties (Shashikant Prabhu v. Rahul Saini and another), decided on 21.12.2020. The order of Allahabad High Court in the case of **Bail Application No.7640/2020** between the parties (Anil Kumar Mishra v. Union of India through Central Narcotics Bureau) decided on 28.6.2021, in the judgment of High Court of Punjab and Haryana in **CRM-M No.12997 of 2020** between the parties (Daljit Singh v. State of Haryana) decided on 16.7.2021. The order passed by this Court in **MCRC No.836 of 2021** between the parties (Niranjan Kumar Singh v. Government of India), decided on 9.6.2021, and in **MCRC No.9301 of 2020** between the parties (Pawan Yadav v. State of Chhattisgarh), decided on 14.7.2021 and in order of High Court of Delhi in **Bail Application No.2585/2020** between the parties (Mohit Aggarwal v. Narcotics Control Bureau) decided on 16.3.2021. In all these cases, learned Courts have referred to the judgment of Supreme Court in the

case of Tofan Singh (supra) and granted bail, therefore, there is no case present against this applicant in view of the judgment in Tofan Singh's case and in view of the hostility of the material witnesses. Therefore, it is prayed that his bail application be allowed and he may be granted bail.

4. Learned counsel for respondent vehemently opposes the application and submits that the earlier application of this applicant has been dismissed on merits. The other accused in this case made voluntary statement against this applicant, stating that the applicant is the key person in making provisions for supply of ganja and also for escorting the transport of ganja. There is confessional statement of the applicant himself, that he is engaged in the business of supply of ganja. This Court has also observed that there is confessional statement of the co-accused persons which may be of value for consideration under Section 30 of the Evidence Act. Huge quantity of ganja has been seized in this case which is 6,545kgs, therefore, it is a case of organized crime of drug trafficking.

Relying on the judgment of Supreme Court in the case of State of Kerala etc v. Rajesh in CRA No.154-157 of 2020 decided on 24.01.2020, in which, it was held that in the case of NDPS Act, two conditions are to be satisfied, firstly of the prosecution is given opportunity to oppose the application and second that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. It is further explained that reasonable ground must more than *prima facie* ground. At the present stage, the trial is continuing and number of witnesses are yet to be examined, therefore, there is no reason to hold that the applicant is not guilty of the commission of offence, hence, this application may be

rejected.

5. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.
6. Considered on the submissions. The previous bail application of this applicant MCRC NO.986 of 2019 dismissed on 12.7.2019 and it was observed in paragraph-11 of that order is follows:-

“Considered on all the facts and circumstances of this case. The position of Intelligence officer of DRI is altogether different from that of a police officer. Therefore, the confessional statement made in presence of such officer may have evidentiary value if it is proved in accordance with law. The principle laid down in Mohan Lal's case (supra) is clearly with respect to the police officers. Section 30 of the Evidence Act empowers a Court to consider confessional statement made by one accused against another accused. Therefore, after over all consideration, for the reasons that the huge quantity of ganja seized in this case, which shows involvement of a complete racket in the said transportation of ganja, a narcotic substance, therefore, I am not inclined to allow the applications of these applicants.”

In the case of Tofan Singh(supra) the Supreme Court has held in paragraph 155 & 158 as follows:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under [Section 42](#) or [Section 53](#) can be the basis to convict a person under the [NDPS Act](#), without any *non obstante* clause doing away with [Section 25](#) of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under [Section 53](#) of the NDPS Act are “police officers” within the meaning of [Section 25](#) of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of [Section 25](#) of the Evidence Act, and cannot be taken into account in order to convict an accused under the [NDPS Act](#).

158.2. That a statement recorded under [Section 67](#) of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the [NDPS Act](#).

This was a judgment by majority, however, there was a dissenting view of one judge in the three judge Bench and the dissenting view is expressed in paragraph No.262 as follows:-

“262. For the reasons discussed, I am firmly of the view that the differences adverted to, do not make any difference to the law laid down in *Badku Joti Savant (supra)* followed and affirmed in *Romesh Chandra Mehta (supra)* and *Iliyas (supra)* and subsequent decisions, which have held the field for over fifty years. ”

7. In the orders cited by the applicant side the judgment of Bombay High Court *Shashikant(supra)*, Allahabad High Court in *Anil Kumar Mishra(supra)*, the judgment of Punjab and Haryana in *Daljit Singh(supra)* and the judgment of Delhi High Court in *Mohit Aggarwal(supra)*. The dictum in the *Tofan Singh* has been followed in granting bail to the concerned accused persons. The orders of this Court cited in the case of *Niranjan Kumar Singh(supra)* and *Pawan Yadav(supra)* the grant of bail to the concerned accused persons have been in different context.
8. In the case of this applicant while deciding the earlier application this Court has already taken a view against the applicant. The statement given by the applicant before the Officer of DRI would be whether admissible as a confessional statement in evidence or not, is a subject to be dealt in the trial. This Court while deciding the bail application cannot hold anything on the submissions made, looking to the previous view taken by this Court in the previous order and that may also cause prejudice to one of the parties, which may also have influence on the trial Court. The view laid down by the Supreme Court in the case of *Tofan Singh(supra)* can be very well relied upon by the applicant in the trial against him, but not in the matter of grant of bail, hence, I am of this view that this application is not fit to be allowed, hence, the

application is rejected.

9. Accordingly, the bail application filed under Section 439 of the Cr.P.C.
is rejected.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha