

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4291 of 2021

Tejram Patel S/o Shri Purshottam Patel Aged About 34 Years R/o Indria Gandhi Ward, Pipariya, Tahsil Pipariya, District Hoshangabad (M.P.), District : Hoshangabad, Madhya Pradesh

---- Applicant

Versus

State Of Chhattisgarh Through S.H.O. Police Station Bhanpuri, District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

And

MCRC No. 5271 of 2021

Ashok Ahirwar S/o Shankar Lal Aged About 34 Years R/o Near Electricity Office, Village- Shobhapur, Tehsil- Sohagpur, Police Station- Sohagpur District- Hoshangabad, Madhya Pradesh., District : Hoshangabad, Madhya Pradesh

---- Applicant

Versus

State Of Chhattisgarh Through SHO, Police Station- Bhanpuri, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicants	:	Shri Arvind Shrivastava, Advocate
For State	:	Shri Jitendra Shukla, Panel Lawyer

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

Order On Board

31/08/2021

Heard.

1. MCRC No.4291 of 2021 and MCRC No.5271 of 2021 are being disposed off by

this common order as both the applications arise out of same crime number.

2. These are the repeat bail applications by both the applicants. Their earlier bail applications have been dismissed on 1.12.2020.
3. The applicants are arrested in connection with Crime No.85/2020 registered in Police Station- Bhanpuri, District- Bastar (CG) for alleged commission of offence under Section 20 (b) & 29 of the NDPS Act.
4. Case of the prosecution, in brief, is that a vehicle containing ganja was intercepted by the police and more than 80 kg of ganja was recovered. The applicants are alleged to be travelling along with ganja in the said vehicle.
5. Learned counsel for the applicants would submit that the manner in which the prosecution case has been prepared, it is a concocted case. He submits that the applicants have no antecedents of commission of such offence. He would submit that the time which have been noted for completing various proceedings after the vehicle was intercepted till the alleged *ganja* is said to have been recovered and deposited in the police station, appear to be mechanical and prepared by sitting in the police station rather than such incident actual having taken place. He further submits that time of search of staff and vehicle is identical which smacks of false implication, therefore, whether the staff was actually searched or not, becomes highly doubtful and, therefore, the entire proceedings are also doubtful. Learned counsel for the applicants next submitted that even though there is evidence that despite receipt of *mukhbir* information sufficient time was left to take warrant, proceedings were not drawn and *mukhkbir panchnama* and reasons for not taking warrant was mechanically noted. Lastly, it is submitted that the applicants are in jail for last one year and trial is not concluded, therefore, at this stage, the applicants may be released on bail.
6. On the other hand, learned counsel for the State opposed the applications and submits that the applicants are alleged to be travelling in the vehicle in which huge quantity of *ganja* have been found which is far more than prescribed minimum commercial quantity. He submits that the Investigating Officer has not been examined till date. The proceedings with regard to search, seizure, drawl of sample, weighment, safe custody and sending the same to malkhana and in turn

to FSL and the report of contents being ganja have been strictly followed by the Investigating Officer.

7. I have heard learned counsel for the parties. At this stage, only because seizure witnesses have not supported the prosecution case, it cannot be said that there is reasonable ground to believe that the applicants have not committed such offence in view of settled legal position that even if independent witnesses of seizure have not supported the prosecution case, conviction can be sustained on the basis of reliable testimony of the Investigating Officer.
8. In the present case, till date, the Investigating Officer has not been examined. Whether other proceedings were properly drawn or not cannot be decided at this stage nor a prima facie view can be taken as the Investigating Officer has not been examined. Therefore, at this stage, there is no material to record satisfaction that there are reasonable grounds to believe that the applicants are not guilty of commission of offence and that they are not likely to commit such offence. Therefore, I am not inclined to grant bail to the applicants at this stage.
9. Accordingly, both the applications are rejected. However, considering that the applicants are in jail since 12.8.2020, trial Court is directed to conclude the trial as early as possible preferably within a period of four months.

Sd/-
(Manindra Mohan Shrivastava)
Judge