

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.5717 of 2021**

- Vijay Kumar S/o Shri Dasrath Kumar Aged About 42 Years R/o Village Railmajara, P. S. Balasore Nayasahar, Bhagat Singh Nagar, District Namasahar Punjab

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Nagarnar District Bastar Jagdalpur Chhattisgarh

---- Respondent

Present:-

Shri Ashok Kumar Komra, counsel for the applicant.
Shri Lalit Jangde, Dy.GA for State.

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava
Order On Board

13/09/2021

Heard.

1. This is repeat bail application. Earlier bail application was dismissed as withdrawn.
2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.133/2020 registered at Police Station Nagarnar, District Bastar-Jagdalpur for the offence punishable under Section 20(B)(II)(C) of the NDPS Act. The applicant was arrested on 24-08-2020.
3. Prosecution case is that upon receipt of mukhbir information, the truck was intercepted and search was carried out, then, around 200 KG of ganja was found in as many as 20 boxes. According to the prosecution, it is the applicant, who was driving the truck.
4. Learned counsel for the applicant would submit that assuming that, it is a

case of commercial quantity, there are number of discrepancies reflected from the charge sheet, which clearly show that the applicant has been falsely implicated and no such search and seizure was made from the possession of the applicant. Learned counsel for the applicant would argue that in the duty certificate and the notice to the independent witnesses, certain corrections have been made out, which renders the prosecution case doubtful. It is also argued that time of return to the police station have been incorrectly recorded and the Rojnamcha sanha does not reflect recording dehati nalishi at the spot. The allegation against the applicant that he was driving the truck is also doubtful, because no driving license has been found nor it was seized from the possession of the applicant. It is also submitted that the timings in the detailed inventory report are also incorrectly mentioned, because, total quantity is not exactly the same as said to have been seized, because in the inventory report, quantity is stated to be 193.75 Kg, whereas at the time of seizure, it was recorded as 200 KG. It is also argued that the map, which was prepared by the Patwari is ante-dated map. Lastly, it is argued that the applicant is in jail since 24-08-2020, therefore, at this stage, when one year has elapsed and trial has not been concluded till date, the applicant may be granted bail.

5. On the other hand, learned State counsel opposes the bail application by submitting that the information with regard to transportation of ganja, which was received, duly recorded in writing and the reason why warrant could not be obtained immediately was prepared in writing and submitted and received in the office of S. D. O. (Police) on that very date, before proceeding to the spot. Thereafter, the vehicle was intercepted, in which, large quantity of ganja was found being transported and it was seized. He would further submit that all the discrepancies, which have been pointed out by learned counsel for the applicant was not material and the same are trivial in nature and not affecting substantial and mandatory procedure prescribed under the law followed by violation of the

provisions with regard to seizure and sending information to the higher authorities under Section 57 of the NDPS Act. It is submitted that the discrepancy in the quantity of ganja does not help the applicant in any manner, because it could possibly be because of the error in weighing machine at the spot and preparation of inventory before the Magistrate. In any case, out of two, lesser quantity is also huge being 193.75 KG of ganja.

6. On prima facie consideration, this Court finds that upon receipt of secret information on 24-08-2020, it was reduced in writing and concerned police authorities arrived at the spot and ganja have been seized and seizure of ganja said to have been made from the vehicle/truck. According to the prosecution, it was the applicant, found at the spot, was arrested, taken into custody at the spot itself. On prima facie consideration, it also shows that information containing reason as to why warrant could not be immediately obtained was sent to the S.D.O.(Police) on 24-08-2020. Spot FIR has been recorded, in which, proceedings have been drawn, which are, later on, reflected in the FIR registered in the police station. At this stage, this Court would not comment upon various discrepancies pointed out to this Court, but broadly speaking, this Court finds that as far as mandatory provisions of Section 42(2) of the NDPS Act are concerned, it is prima facie found to be complied with leading to seizure of huge quantity of ganja. The charge sheet also reflects that in the FSL report, it was found to be ganja.

7. Another argument of learned counsel for the applicant is that as seizure witnesses have not supported the prosecution case, therefore, in the opinion and satisfaction at this stage, it could be recorded as a case of Section 37(1)(b) of the NDPS Act. It is well settled legal position that even if the independent witnesses do not support the prosecution case, reliable evidence of Investigating Officer could be used to convict the accused under the provisions

of the NDPS Act.

8. Another argument has been raised that as the applicant has remained in jail for last one year, his right of speedy trial has been violated and therefore, only on the ground that there exists special provision under Section 37(1)(b) of the NDPS Act, a person cannot be kept in jail for a long period. The aforesaid submission was duly considered by this Court in the case of ***Punit Ram Pandey vs. State of Chhattisgarh*** (MCRC No.1158 of 2020, decided on 29-01-2021)_involving the commercial quantity of the narcotics and this Court relying upon the judgment of the Supreme Court and held as below:-

6. This Court finds that the applicants have remained in jail for about two years and trial has not been concluded till date. In this regard, reliance has been placed on the judgment of the Calcutta High Court in the case of **Sanawar Ali** (supra). In that case, on facts, it was found that the accused had remained in detention for more than 5 years and trial had not been concluded. Applying the directions issued by the Supreme court in the case of **Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and ors. (1994) 6 SCC 731**, bail was granted to the accused on that ground alone.

In the case of **Supreme Court Legal Aid Committee** (supra), an issue arose for consideration as to whether in view of bar created under Section 37 of NDPS, undertrial prisoners should be admitted to bail only on the ground of delay in trial. The Supreme Court had an occasion to deal with the situation where the accused charged of commission of offence under NDPS Act were in jail and trial was being inordinately delayed. It was observed as below -

“15.We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part

of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S.Nayak*, (1992) 1 SCC 225, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us.

.....”

A series of directions were issued by the Supreme Court as to how the

accused of undertrial prisoners who were charged of commission of offence under the NDPS Act have to be dealt with in the matter of bail, depending upon the gravity of offence and period of undertrial detention as below -

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the

Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for

cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.”

Their Lordships in the Supreme Court, however, clarified that those directions intend to operate as one-time direction for cases in which accused are in jail and trials are delayed and they are not intended to interfere with the Special Court's power to grant bail under Section 37 of the NDPS Act in following words -

“16. We may state that the above are intended to operate as one-time directions for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order.”

7. The Division Bench of the Calcutta High Court in the above referred decision considered the aforesaid directives of the Supreme Court in the case of **Supreme Court Legal Aid Committee** (supra). The argument that such directions were intended to operate as “one time measure” was also dealt with and it was noted that subsequently, those very directions were extended to the State of West Bengal and other States vide order dated 17/04/1995 in the case of **Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India and another, (1995) 4 SCC 695**. It was further held that the directives given by the Supreme Court is applicable to achieve universal equality and directives may be extended to all undertrials who are similarly situated and are suffering protracted detention through out the length and breadth of the country.

9. Therefore, only on the ground of delay in trial for last one year, at this stage, case for release only on that ground is not made out taking into consideration the case involves commercial quantity.

10. Therefore, in the considered opinion of this Court, this Court is unable to form an opinion recording satisfaction that there is prima facie ground to believe that the applicant has not committed the offence. Taking into consideration the aforesaid circumstances cumulatively, no case for grant of bail is made out. The application is therefore rejected.

10. Before parting with the case, it is clarified that whatever observations have been made by this Court, are only prima facie view for deciding the bail application and the trial Court shall not be influenced in any manner on the observations made by this Court.

SD/-
(**Manindra Mohan Shrivastava**)
Judge