

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No.6828 of 2021

- Rahul Pandey S/o Rajeshwar Pandey Aged About 29 Years R/o Kanpur Road, D. S. 82 Sector D, LDA Basti ADA Colony, Lukhnau Uttar Pradesh P. S. Isha Nagar, District Lukhnau Uttar Pradesh Presently Residing At Dindayal Colony, Mangla Chowk Bilaspur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Kondagaon, District- Kondagaon Chhattisgarh

---- Non-applicant

For Applicant : Mr. T.K. Jha, Advocate

For Non-applicant/State : Ms. Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24-09-2021

Heard.

1. This is the first bail application filed under Section 439 of the Cr.P.C for grant of regular bail to the applicant who has been arrested on 21.08.2021, in connection with Crime No.304/2021, registered at Police Station-- Kondagaon, District- Kondagaon C.G. for offence punishable under Section 20(B)(II C) of N.D.P.S. Act.
2. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case. The applicant was traveling in a bus. When the bus stopped, the applicant got down for urination, there he saw a car parked and the policeman present around it. When the applicant made some enquiry, he was nabbed in as a person in possession of the car. The car and the contraband seized from that car does not belong to this applicant. The vehicle seized has

its registration in Raipur, whereas, the applicant is resident of Bilaspur. It is also submitted that Section 42 of N.D.P.S. Act was not complied with in this seizure, in which it is mandatory for the officer to obtain a search warrant for the search of a conveyance. Therefore, the case against this applicant is full of fault.

3. Relying on the judgment of Supreme Court in the case of Boota Singh & Ors. Vs. State of Haryana in Criminal Appeal No.421/2021 decided on 16.04.2021, in which it is held that the vehicle belong to the accused is a private vehicle and that does not come within the definition of public place as explained in Section 43 of N.D.P.S. Act. Therefore, in such a case, the warrant for search was necessary. It is further stated that the rigors of the provision under Section 37 of N.D.P.S. Act are not excessive as they are described.
4. Relying on the judgment of Supreme Court in the case of Union of India Vs. Shiv Shanker Kesari reported in Laws (SC) 2007 9 79, in which it is held that the Court has to consider about the substantial probable cause for believing that the accused is not guilty of the offence charged. Therefore, the circumstances that are present in this case clearly show that it can be believed that the applicant is not the person who has committed the offence, hence, it is prayed that this application may be allowed.
5. Learned counsel for the State/non-applicant opposes the application and submits that the applicant was the person, who was found in possession of car and the contraband. The procedure of search and seizure has been done by the Investigation Officer in accordance with the provisions of N.D.P.S. Act. When notice was served upon the applicant, he did not make any objection that he is not the person in possession of the car and the contraband and he gave consent for his

own search and the search of the car and in that search, the applicant was found in possession of the huge quantity of contraband, which was more than commercial quantity, therefore, there is a prima facie case present against this applicant and there is no ground to draw the conclusion that the applicant may not be the person, who has committed the offence. It is prayed that the application may be rejected.

6. I have heard learned counsel for the parties and perused the case diary.
7. According to the prosecution case, on the incident, Police Station Kondagaon received a confidential information regarding transport of contraband in a car. One Tata Indigo ECS bearing registration No.CG 10 NB 9324 was stopped. The person in the driving seat introduced himself as Rahul Pandey, who is the applicant. After completing the formalities of search according to the N.D.P.S. Act, the contraband Ganja was found in his possession, on weighing the contraband total weight was found to be 45.800 kg. which was seized from this applicant. Hence, this case.
8. Considered on the submissions. As submitted by learned counsel for the applicant that the applicant was not the person in the car, is a ground of his defence and there is nothing present in the case diary to support this submission. The other ground regarding the probability is this that the car was registered in R.T.O., Raipur by itself does not create any stand in favour of the applicant as the applicant was found in the driving seat of the car. Section 42 of N.D.P.S. Act empowers the officer, as mentioned in the provision to enter into and search in conveyance or place. The definition of conveyance under Section 2 (VIII) of N.D.P.S. Act includes a vehicle that is a car as well. Even if it is considered that the conveyance cannot be regarded as the public place. If the same when found in public place can be searched by a police officer or any

other officer having such authority under Section 42 of the Act, 1985. Whether the non-compliance of formalities throws away the case, can be considered only by the trial Court.

9. The stringent provision under Section 37 of N.D.P.S. Act has to be followed in granting bail in which firstly, the public prosecutor has to be given the opportunity to oppose the application and secondly that the Court has to be satisfied that there are reasonable grounds for believing the accused is not guilty of the offence committed. On perusal of the case diary, I do not find any reasonable ground present on the basis of which it can be held that the applicant may not have committed the offence, otherwise, the facts present are clearly against the applicant. Therefore, I am of this view that it is not a fit case for grant of bail to the applicant.

10. Consequently, this application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail is hereby rejected.

11. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge