

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.7894 of 2020

Bheem @ Indrajeet Kaushik S/o Nandkumar Kaushik Aged About 27 Years R/o Village Dagori, Tahsil And Police Station Bilha, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
---- **Applicant**

Versus

State Of Chhattisgarh Through Police Station Chakarbhata, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
---- **Respondent**

MCRC No. 8085 of 2020

Saurabh Kumar Thawait @ Ravi S/o Late Shri Chandrika Prasad Aged About 25 Years R/o Village Chhatauna, Police Station Chakarbhata, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
----**Applicant**

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Chakarbhata, Civil And Revenue District Bilaspur Chhattisgarh
---**Respondent**

For respective Applicants	:	Mr. Lav Sharma and Mr. Pramod Shrivastava, Advocates
For State	:	Mr. K.K. Singh, Government Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

11.02.2021

Heard.

1. The applicants have been arrested in connection with Crime No.241 of 2020 registered at Police Station-Chakarbhata, District Bilaspur (CG) for the alleged commission of offence under Section 21 & 22 of the Narcotics Drugs and Psychotropic Substances, Act 1985 (for short 'the Act of 1985').
2. Prosecution case is that the applicant/Saurabh Kumar Thawait @ Ravi was intercepted on the road on the basis of mukhbir information and from his possession, commercial quantity of psychotropic substance codeine phosphate containing syrup bottles were found. When his memorandum was recorded, he disclosed that quantity of ganja were supplied to him by co-accused Bheem @

Indrajeet Kaushik, which was being transported.

3. Learned counsel for the applicants would submit that the applicants have been falsely implicated. The provision under Section 41(1) of the Act of 1985 has not been complied with as the search and seizure has been carried out without warrant taken from competent authority. It is next submitted that the time at which Mukhbir panchnama was recorded and thereafter various proceedings on spot were carried out, renders it wholly improbable that the applicant Saurabh Kumar Thawait @ Ravi was intercepted at the spot and any seizure was made which show that all the proceedings including seizure are false and fabricated. He would next submit that in the notice given to witnesses, place recorded is police station, it has been later on struck off which renders it highly probable that entire proceedings are false as they have been prepared only in the police station and not at the spot. For co-accused Bheem@Indrajeet Kaushik the main argument is that Bheem @ Indrajeet Kaushik was not found at the spot but he is being involved only on the basis of memorandum of co-accused as co-accused has stated that the entire quantity of drugs were supplied to him by the applicant Bheem @ Indrajeet Kaushik.
4. On the other hand, learned counsel for the State opposes the prayer and submits that due satisfaction of there being no time to take warrant without involving risk of accused running away has been duly recorded and sent to the higher police officer. He would next submit that the proceedings have been drawn at the spot in presence of independent witnesses, therefore, they cannot be doubted. It is next submitted that as the applicants are involved in transportation and trafficking of commercial quantity of psychotropic substance, in the absence of there being any material to record satisfaction in terms of Section 37(1)(b) of the Act of 1985, the application may be rejected.
5. In the present case, the accused persons are said to be involved in trafficking of drugs/ psychotropic substance in commercial quantity. The argument with regard to non-compliance of Section 41(1) of the Act of 1985 cannot be accepted at this stage, because on records the charge-sheet and case diary show that mukhbir panchnama was prepared, satisfaction was recorded why the police officer could not take warrant for search and seizure, then only he had proceeded at the spot. The entire proceedings relating to interception of vehicle, Sahmati panchnama, talashi panchnama, seizure of drugs have been drawn at the spot by the police officer in presence of independent witnesses. The ground that notice to witness

initially showed the place as police station though later on change to the spot, at this stage, cannot be made a basis to record a satisfaction that the applicants have not committed the offence. Therefore, this Court is unable to form an opinion that the applicants are not guilty of alleged commission of offence. The bail applications are therefore rejected.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha