

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.8010 of 2020

Amarsay S/o Devdhar Aged About 52 Years Caste- Teli, R/o Village -
Bendari, Police Station - Saraypali, Tahsil - Basna, District - Mahasamund
(Chhattisgarh) **---- Applicant**

Versus

State Of Chhattisgarh Through The Police Station - Saraypali, District -
Mahasamund (Chhattisgarh) **---- Respondent**

For Applicant	:	Shri Roop Naik, Advocate
For Respondent/State	:	Shri Praveen Shrivastava, Panel Lawyer

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

Order On Board

29/01/2021

Heard.

1. The applicant has been arrested in connection with Crime No.387 of 2020 registered at Police Station- Saraypali, District Mahasamund (CG) for the alleged commission of offence under Section 20(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Prosecution case is that upon receipt of mukhbir information, the *baadi* (enclosed kitchen garden) of the applicant was search and 10 plants of ganja were found. According to the prosecution, the applicant was involved in cultivating ganja.
3. Learned counsel for the applicant would submit that the place wherefrom the ganja has been recovered is an open place and not in enclosed place and it is just by side of road, and therefore, it cannot be said that the applicant was cultivating. He would further submit that merely because 10 plants of ganja have been found, presumption of cultivation cannot be drawn and there is not evidence collected by the prosecution to show that the applicant was found cultivating ganja. Relying upon the judgment of the Supreme Court in the case of **Alakh Ram Vs. State of UP, 2004 (1) SCR 394**, it is submitted that no prima facie case is made out against the applicant and in the alternative, it is submitted that as only 10 plants of ganja which alleged to

have been recovered from the place, at this stage, when investigation is complete, charge-sheet has been filed and that the applicant is in jail, he may be granted bail.

4. On the other hand, learned counsel for the State opposes the prayer and submits that recovery of 10 plants of ganja from the enclosed premises makes out a prima facie case against the applicant that he was cultivating ganja and for this, he is liable for rigorous imprisonment, if proved, which may extend to 10 years and fine of Rs.1,00,000/-.
5. On prima facie consideration, this Court finds that the applicant has been involved on the allegation that from the *baadi* of the applicant, certain ganja plants (10 in number) were found. The applicant has come out with the case that it was in the open place and not in the house of the applicant and there is no witness of the prosecution, who has come out to say that the applicant was seen cultivating ganja in his premises, therefore, considering the judgment of the Honble Supreme Court in the case of *Alakhram (supra)* and that investigation is complete, charge-sheet has been filed and the allegation is of recovery of 10 plants of ganja, in the totality of the circumstances, I am inclined to grant bail to the applicant. Therefore, the application is allowed.
6. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- along with one local surety for the like amount to the satisfaction of the concerned trial Court with following further conditions:
 - (i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge