

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.8182 of 2020

Sagar Peshwani S/o Rajesh Peshwani Aged About 29 Years R/o Deviganj
Road Sindhi Colony, Ambikapur Police Station And Tehsil Ambikapur, District
Surguja, Chhattisgarh **---- Applicant**

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Ambikapur, District Surguja, Chhattisgarh **---- Respondent**

For Applicant	:	Mr. Nishi Kant Sinha, Advocate
For Respondent/State	:	Ms. Samiksha Gupta, Panel Lawyer

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

Order On Board

26/02/2021

Heard.

1. The applicant has been arrested in connection with Crime No.578/2020 registered at Police Station- Ambikapur, District Surguja (CG) for the alleged commission of offence under Section 21(C) of Narcotics Drugs and Psychotropic Substances Act.
2. Case of the prosecution is that while the applicant was moving on road, it being found suspect was intercepted and it is alleged that from the possession of the applicant 22ml of Rexogesic Ampule was found which contained prohibited narcotics Buprenorphine Hydrochloride IP.
3. Learned counsel for the applicant would submit that the entire proceeding of search and seizure are false, fabricated and are completely vitiated on account of total non-compliance of Section 50 of NDPS Act. He would submit that compliance of Section 50 of NDPS Act requires that when an Officer is about to search, he shall, when person require, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate. In the present case, no such option was given to the applicant nor any proceeding has been drawn in that regard. Therefore, the entire prosecution case is untenable in law. It is also added that there is discrepancies with regard to whether the applicant was on foot or was in a bike because there are different versions of the prosecution witnesses in this regard. It is also submitted that the applicant is

not likely to commit any offence while on bail. Therefore, at this stage, the applicant may be granted bail.

4. On the other hand, learned counsel for the State opposes the bail application and submits that though the investigation document do not contain any panchnama of proceeding drawn under Section 50 of the NDPS Act, the Police Officer who intercepted the applicant on road has searched the accused in person and psychotropic substance was found from his pocket and this is supported by independent witnesses of seizure, therefore, at this stage, it cannot be said that the seizure was false.
5. Having considered the submission of learned counsel for the parties, particularly taking into consideration the submission that though seizure alleged to have been made from the purse of the applicant, there is no compliance of Section 50 of NDPS Act which is mandatory and after going through the contents of the case diary, where no such material with regard to compliance of Section 50 of NDPS Act is found and taking into consideration the settled legal position that non-compliance of Section 50 of NDPS Act, in the event of personal search and seizure and recovery from the purse of the applicant, that initiated effect, this Court is satisfied that there are reasonable ground for believing that the applicant is not guilty of offence. Further no material is contained in the case diary to show that in the event of grant of bail the applicant is likely to commit any offence. Accordingly, 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.25,000/- 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