

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3 of 2021

- Shiv Shankar Gupta, aged about 30 years S/o Ramawtar Gupta C/o Purani Tahseel Ke Samne Parbhakar Nagar, Bebru Banda (U.P.)

---- Applicant

Versus

- Directorate of Revenue Intelligence, Thru; Intelligence Officer, Nagpur Regional Unit, Nagpur (Maharashtra)

---- Respondent

AND

MCRC No. 1322 of 2021

- Baldeo Prasad Gupta S/o Shri Kalidin Gupta, aged about 44 years R/o Mohalla Kalukuaan Near Bank of Baroda, District Banda (U.P.)

---- Applicant

Versus

- Union of India Through Directorate of Revenue Intelligence, regional Office, Nagpur, Sixth Floor C.G.O Complex Samineri Hills Nagpur 440006, (Maharashtra)

---- Respondent

For Applicant in MCRC No. 3/2021	:	Shri Kishore Bhaduri, Senior Advocate with Mr. Anchal Kumar Matre. Advocate
For Applicant in MCRC No. 1322/2021	:	Shri N.K. Shukla, Senior Adv. With Mr. Arjit Tiwari, Advocate
For Respondent	:	Shri Ramakant Mishra, ASG

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

10/06/2021

Heard.

1. Since both the bail applications arise out of same crime number,

therefore, they are being decided by this common order.

2. These are the *first* bail applications filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the respective applicants for grant of regular bail to them, as they are in custody in connection with Crime No. 148/2018 registered at Police DRI Nagpur (Maharashtra) for the offence punishable under Sections 20, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act')
3. Counsel appearing on behalf of applicant Shiv Shankar Gupta in MCRC No. 3/2021 submits that this applicant has been falsely implicated in the present case. He has no connection with the crime committed. This applicant was simply hired as a driver to drive the car on which the other accused persons were traveling. He was not having any knowledge about the goods in the truck that was following the car. The real culprits who were transporting the contraband have absconded from the spot and the innocent applicant is behind the bar. Relying on the judgment of Supreme Court in the matter of ***Sujit Tiwari v. State of Gujarat and Another, (2020) Vol. XIII SCC 447***, it is submitted that the Supreme Court has granted bail to the accused person on stringent conditions although there is allegation, that he has been part of conspiracy in smuggling a huge quantity of contraband in India. Reliance has also been placed in the matters of ***Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence, (2018) Vol. VIII SCC 271*** and ***Union of India v. Leen Martin and Another, (2018) Vol. IV SCC 490***. Hence, it is prayed that the applicant may be enlarged on bail.

4. Counsel appearing on behalf of applicant Baldeo Prasad Gupta in MCRC No. 1323/2021 submits that he would like to adopt the argument advanced by the counsel appeared on behalf of applicant Shiv Shankar Gupta. It is submitted that the charge-sheet/complaint has been filed and no seizure has been made from this applicant in the investigation. It is also submitted that the charge-sheet mentions the place of incident in District, Kanker, whereas memorandums and seizures have been recorded in Raipur. The case is pending for trial for more than 2 years 8 months and not a single witness has been examined so far, therefore, this applicant may also be enlarged on bail.
5. Learned ASG appearing for the respondent in both the cases opposes the bail applications of both the applicants. It is submitted that the statements of Shiv Shankar Gupta and Baldeo Prasad Gupta that have been recorded during investigation, clearly show their involvement in the crime. Further, applicant Baldeo has criminal antecedent. Hence, both the applicants have been part of conspiracy in commission of the crime. Reliance has been placed on the judgments of Supreme Court in the matters of ***Mohd. Hussain Umar Kochra etc. v. K.S. Dalipsinghji and another, AIR 1970 SC 45, State (Delhi Administration) v. V.C. Shukla and another, AIR 1980 SC 1382 and Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698***. It is further submitted by the learned ASG that Section 35 of the NDPS Act provides for reverse burden of the accused person that he has to prove his innocence. Similarly, Section 54 of the NDPS Act provides for presumption regarding commission of offence in respect of such person who is in possession of contraband. Therefore, the applicants in both the cases are not entitled to get bail because the

contraband seized is in huge quantity. He prays to reject the bail applications.

6. Counsel for applicant Shiv Shankar Gupta submits that there is no clear evidence regarding conspiracy. The investigation itself shows that this applicant was neither searched nor interrogated by the investigation agency. The applicant is in detention for more than 2 ½ years, therefore, he is entitled to get bail.
7. Counsel appearing on behalf of applicant Baldeo submits and replies that the investigation with respect to this applicant is not clear, therefore he is also entitled to get bail.
8. The case of the prosecution is that on the date of incident, the officers of respondent, upon receiving a confidential information, arrived on the spot and found a truck bearing registration No. CG04 JB 7703 which was being escorted by a Tata Zest car bearing registration No. UP90 N 5172. Search was made in accordance with the provisions of NDPS Act and 1880 Kilograms of cannabis was found that was being transported by the said truck. Arrest of the applicants were made subsequently.
9. Considered on the submissions. The grounds raised by the applicants in both the cases are required to be established in trial. The restriction laid down under Section 37 of the NDPS Act are clearly applicable in these cases. The learned ASG has vehemently opposed the bail applications and this Court also finds no reason to believe that the applicants are not guilty for the offence which is alleged to have been committed. After perusal of the statements that has been recorded during investigation, I am of the view that the applicants in both the

cases are not entitled for grant of bail

10. Accordingly, the bail applications are dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

rahul