

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.271 of 2021**

- Babli Sahni W/o Babulal Aged About 50 Years R/o Atal Awas Sakri, District- Bilaspur (C.G.), District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Sakri, District- Bilaspur (C.G.), District : Bilaspur, Chhattisgarh

---- Respondent

For Applicant	:	Shri KPS Gandhi, Advocate
For Respondent/State	:	Dr. Veena Nair, Dy.AG

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****24/05/2021**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.199/2020 registered at Police Station Sakri, District Bilaspur for the offence punishable under Section 21, 22 of the NDPS Act.
2. This is a repeat bail application. Earlier bail application was dismissed as withdrawn vide order dated 18/11/2020 passed in MCRC No.5332 of 2020.
3. Learned counsel for the applicant would argued that the applicant has been falsely implicated and false seizure has been made against her. He would submit that though alleged contraband/psychotropic substance is said to have been seized from the living room of the present applicant, provision under Section 50 of the NDPS Act was violated. He would next submit that as far as active substance contained in the Evil Syrup allegedly seized from the possession of the applicant, is concerned, none of the active substance/components are not enlisted and scheduled as psychotropic substance under the notification issued by the government from time to time appended by way of Schedule along with NDPS Act and rules made thereunder.

As far as seizure of alleged 16 injections of narcotic drug and Rexogesic is concerned, Forensic Science Report has clarified that every injection contains only 0.3 gram Buprenorphin, whereas according to Entry No.169 of the Schedule appended to the Act, commercial quantity is 20 gram. As the applicant has been arrested on 22-07-2020 and charge sheet has already been filed, at this stage, he may be granted bail on the ground of long pre-trial detention.

4. On the other hand, learned counsel for the State/non-applicant opposes the bail application by submitting that though the chemical components and Evil Syrup, which is said to have been seized from the possession of the applicant does not contain any psychotropic substance scheduled under the NDPS Act, in the injection of Rexogesic, each ampoule contains 0.3 gram of Buprenorphin and taking into consideration the entire quantity contained in 16 injections seized from the applicant, it comes to 32 grams, which is more than commercial quantity. Learned State counsel would further argue that since psychotropic substance, which allegedly seized from the living room and not from the personal search of the applicant, the allegation of violation of Section 50 of the NDPS Act is not relevant for consideration of the bail application at this stage. He would further submit that the applicant is not entitled to grant of bail on the ground of long pre-trial detention, because the bail may be granted only in accordance with the provisions contained under Section 37(1)(b) of the NDPS Act, upon recording satisfaction that there are reasonable grounds to believe that the applicant has not committed the offence and is not likely to abscond.

5. I have heard learned counsel for the parties and also considered the material disclosed by the learned State counsel from the contents of the case diary in her hand.

6. According to the prosecution, from the possession of the applicant, Evil Syrup and Rexogesic injection have been seized. These seizures are said to be made from the living room of the applicant in presence of the independent witnesses. Though Forensic Science Report records presence of 0.3 grams of Buprenorphin in each ampoule, in view of the decision of the Supreme Court in the case of ***Hira Singh and another vs. Union of India and another***¹, the entire quantity containing narcotic substance is required to be taken into consideration on the basis of actual weight of the offending drug for the purpose of determination of whether it is small or commercial quantity. Viewed in this manner, the total quantity of 16 injection would be 32 grams containing the active components of Buprenorphin, which is Psychotropic substance,

1 AIR SC 2020 3255

scheduled at S.No.169 appended to the NDPS Act.

7. Considering the aforesaid facts and circumstances, this Court is unable to record satisfaction in favour of the applicant that there are reasonable grounds to believe that the applicant has not committed the offence. Therefore, the bail cannot be granted to the applicant only on the ground of delay of about one year in conclusion of trial.

8. Accordingly, the bail application is rejected.

9. Before parting with the case, the prayer of the learned counsel for the applicant for expediting trial is reasonable and therefore, this Court directs the trial Court that the trial of the case be concluded as early as possible.

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Vacation Judge