

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8246 of 2022

Sawarmal Lohar S/o Shri Madhav Lal Lohar Aged About 19 Years
Caste Lohar, R/o Village Suras Post Thalla, P.S. And Tahsil Raipur,
District Bhilwada Rajasthan (Detail Of Applicant Has Not Mentioned
In Annexure A-1),

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Nagarnar, Jagdalpur District Bastar Chhattisgarh

---- Non-applicant

Along with

MCRC No. 8824 of 2022

Chetan Svarnkar S/o Devilal Ji Svarnkar Aged About 27 Years R/o
Village Potala, P.O. Sahada, District - Bhilwada Rajasthan

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Nagarnar, District - Bastar (Jagdalpur) (C.G.).

---- Non-applicant

For Applicants	Shri Vinod Tekam, Advocate
For State	Shri Amit Verma, P.L.

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

31/10/2022

1. Since both applications are arising out of the same crime number, therefore, they are being disposed of by common order.
2. The applicant (Sawarmal Lohar) has preferred first bail application while applicant (Chetan Swarnkar) has preferred Second bail application under Section 439 of Cr.P.C. as they have been arrested in connection with Crime No.31/2022 registered at Police Station

Nagarnar, District Bastar (C.G.) for the offence punishable under Section 20 (B) of Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'NDPS Act').

3. The case of the prosecution in brief is that on a secrete information received and Police found 60 Kgs. Of contraband from possession of vehicle of accused persons at village Dhanpnji, Forest Naka N.K. 63 Main Road.
4. Learned counsel for the applicants submit that applicants have not committed any offence and have been falsely implicated in the case. He further submits that there is no previous criminal antecedents registered against the present applicants, they are in jail since 15/02/2022, trial may take some time, therefore, they may be released on bail. He further submits that the seizure of 60 kgs contraband (Ganja) was made effective from the owner of the vehicle, the present applicants are only Operator of bore machine and another is assistant of Operator of the bore machine and from their possession vehicle and contraband was seized. He further goes to show that the case of prosecution basically rested upon the statements of two star witnesses who are the independent witnesses of entire investigation carried out by the prosecution starting notice for suspicion under Section 50 (Ex.P-1 & 2), search of self witness and force (Ex.P-5), Search panchnama of govt. vehicle (Ex.P-6), Search Panchnama (Ex.P-7), Seized Panchnama (Ex.P-8), Narcotic Drug identification panchnama (Ex.P-9), scale weight verification (Ex.P-10), weight panchnama (Ex.P-11), samrus panchnama (Ex.P-12), seizure memo (Ex.P-13), Sample Seal Panchnama (Ex.P-14), notice for the reason of arrest of the accused (Ex.P-15 & 16), Arrest memo (Ex.P-17 & 18), Patwari Panchnama (Ex.P-19), Memorandum statement of the accused (Ex.P-20), Notice to become a witness under section 160 CrPC (Ex.P-21), consent of independent witness (Ex.P-22), crime statement form prepared by the police (Ex.P-23), they have not supported the case of prosecution and turned hostile. He submits that in view of the facts and circumstances of the case there are reasonable grounds to believe that the applicants are not guilty and they would not commit same crime in future while on bail. He submits that the condition of Section 37 of NDPS Act has been

satisfied and therefore there is no bar to this Court in granting bail to the applicants. He further relied upon the judgment of Hon'ble the Supreme Court in the case of **Sanjeet Kumar Singh @ Munna Kumar Singh Vs. State of Chhattisgarh** reported in 2022 SCC Online SC 1117.

5. On the other hand, learned counsel for the State opposes the bail application and submits that applicants are resident of Rajasthan and from their possession 60 kgs of contraband Ganja was seized and other witnesses are yet to be examined even assuming that seizure witnesses have not supported the case of prosecution, the conviction can be sustained on the basis of other witnesses including Investigating Officer. In view of above bar under Section 37 of NDPS Act would be applicable against the present applicants. He submits that in the event of bail, local surety may be asked for and they may be restrained from leaving the State of Chhattisgarh without prior permission of trial Court because they belong to State Rajasthan for which counsel for the applicants does not object.
6. I have heard learned counsel for the parties and perused the case diary.
7. Considering the facts and circumstances of the case, looking to the fact that the case of prosecution basically rested upon the statements of two star witnesses who are the witnesses of entire investigation carried out by the prosecution and they have not supported the case of prosecution, in view of Judgment of Hon'ble Supreme Court in the case of **Sanjeet Kumar Singh @ Munna Kumar Singh** (Supra), applicants are in jail since 15/02/2022, Section 37 of the NDPS Act would not come as a bar as prima-facie there is reasonable ground to believe that the condition of Section 37 of NDPS Act appears to have been satisfied. I am inclined to allow this bail application.
8. Accordingly, the bail application filed by applicants is allowed. It is directed that they shall be released on bail on furnishing a personal bond in the sum of Rs.1,00,000/- with one local surety for the like amount to the satisfaction of the concerned trial Court. They shall appear before the trial Court on each and every date given by the said trial Court, till disposal of the trial.

9. It is made clear that the observations made hereinabove is only for the purpose of deciding the bail application and the trial Court will decide the case on its own merit without being influenced by any observation made hereinabove. It is also made clear that the State is at liberty to move an application regarding cancellation of bail of the applicants in the event of applicants involving themselves in similar offence in future. It is also made clear that applicants shall not leave the State of Chhattisgarh without prior permission of the trial Court.

10. Certified copy as per rules.

Sd/-
Sachin Singh Rajput
Judge

Kamde