

HIGH COURT OF MADHYA PRADESH,

BENCH AT INDORE

MCRC NO.218/2021

Rajendra Mishra s/o Vinod Mishra vs. State of M.P

13.01.2021: (INDORE):

Shri A.K.Bhargava, learned counsel for the applicant.

Shri Zeeshan Khan, learned Panel Advocate for the respondent/State.

Heard learned counsel for the parties through video conferencing.

This is second repeat bail application filed under section 439 Cr.p.C seeking bail in connection with Crime No.868/2019 registered at police station Banganga, district Indore for the offence punishable under section 8/20 of the NDPS Act. The first application was dismissed on merit on 02.09.2020 in MCRC No.29642/2020.

As per prosecution story, on 14.07.2019 police received discreet information from the informant that the applicant and co-accused Sachin Parmar were transporting illegal contraband. On the basis of the said information police intercepted the motorcycle on which they were travelling and during search, 2.8 kg. cannabis was recovered from their possession. They were arrested and challan was filed.

Learned counsel for the applicant submits that the prosecution has recorded the statement of three witnesses out of which two seizure witnesses have turned hostile. The

FSL report has not been received so far, therefore, whether the contraband is Ganja or not has not been established so far. He further submits that as per the definition of Ganja as provided in the Act clarifies that the Ganja is the flowering or fruiting tops of the cannabis plant excluding seeds and leaves. The Police has recovered flowering, leaves, seeds and branch which is not ganja, therefore, it cannot be said that applicant was carrying contraband in his possession. Two seizure witnesses have turned hostile. The applicant is in custody since 15.07.2019 and there is no FSL report to establish that the plant and leaves recovered from the applicant comes under the definition of Ganja. The investigation is complete and challan has been filed. The trial may take long time to conclude, hence prays for release of the applicant on bail.

Prayer is opposed by the learned counsel for the respondent/State.

I have perused the case-diary. The applicant is in jail since 15.07.2019 and the seized quantity is less than commercial quantity and there is no FSL report regarding the nature of contraband. Seeds and leaves of cannabis plant are not Ganja when not accompanied by tops. In this case there is recovery of flower tops from the applicant, hence, he is entitled for bail.

Considering the facts and circumstances of the case, the arguments advanced by the learned counsel for the applicant and the fact that the co-accused has already been

enlarged on bail, without commenting on the merit of the case, the application is allowed with the condition of future good conduct. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.2,00,000/- (Rupees Two Lakh) with one solvent surety of the like amount to the satisfaction of the trial Court for his regular appearance before the trial Court during trial with a condition that he shall remain present before the Court concerned during trial and shall also abide by the conditions enumerated under section 437(3) Cr.P.C. It is made clear that during this bail period if the applicant is found involved in any criminal case of the same nature, this order granting the benefit of bail shall stand cancelled automatically.

Before releasing the applicant from the custody the jail authorities are directed to medically examine him in order to rule out the possibility of COVID-19 infections and shall comply with the direction given by the Hon'ble Apex Court in Writ Petition No. 1/2020.

C.c as per rules.

(VIVEK RUSIA)
JUDGE

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