

(2006) 05 CHH CK 0005
In the Chhattisgarh High Court
Case No : M.Cr.C. No. 867 of 2006

Awadesh Kumar

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(B), 42

Citation : (2006) 3 CGLJ 322

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Uttam Pandey, for the Appellant; Arvind Dubey, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Heard.

2. This is an application filed u/s 439 of the Code of Criminal Procedure for grant of regular bail to the Applicant, who has been arrested in connection with crime No. 826/2005, registered at Police Station Kotwali Jagdalpur, District - Bastar (CG) for commission of the offence punishable u/s 20(B) of the N.D.P.S. Act, 1985.

3. The case of the prosecution is that on 19.12.2005, while the police party was on patrolling duty, at about 19.35 hrs, an information was received by the said party that a man is coming on a jeep loaded with certain contraband. Since the party was on patrolling duty, this information was reduced into, writing at 19.35 hrs and was sent to the higher authority at once. The documents pertaining to sending information would show that this information was received by the higher authority at 10.20 (Not mentioned whether in day or night). Thereafter, the alleged vehicle was stopped and a search was made and it was found that in the said vehicle, in a cartoon 8 Kg Ganja was there. The Ganja was seized and a seizure memo was prepared showing the time of 12.20 hrs.

4. Referring to the decision rendered in the matter of Sarija Banu (A) Janarthani alias Janani and Anr. v. State through Inspector of Police AIR 2004 SCW 7488, learned Counsel for the Applicant argues that the provisions of Section 42 of the N.D.P.S. Act have not been properly complied with in this case and there is serious violation of these provisions. He submits that when the information itself was received at 19.35 hrs, a seizure at 12.10 hrs on the same day possibly cannot be made. He also submits that the timing mentioned about receiving of the information by the higher authority also does not support the investigation conducted by the police. His submission is that the violation of mandatory provisions is apparent on the face of the case diary and the entire investigation conducted by the police becomes suspicious. He prays for releasing the Applicant on regular bail.

5. On the other hand, learned State Counsel opposes the bail application. His submission is that the time mentioned in the seizure memo appears to be an error. However, principally he also agrees that when the Mukhbir Panchnama was prepared at 19.35 hrs, the seizure could not have taken place at 12.10 on the same day.

6. Considering the facts and circumstances of this case, particularly considering the timing mentioned in Mukhbir Panchnama, its receipt and in the seizure memo of the articles, I am of the opinion that present is a fit case in which the Applicant should be enlarged on regular bail; His application filed u/s 439 Code of Criminal Procedure is allowed.

7. It is directed that this Applicant shall be released on bail on his furnishing a personal bond in sum of Rs. 50,000/- with one surety in the like sum to the satisfaction of the trial Court for his appearance before the said Court on each date of hearing till disposal of the trial.

8. Looking to the facts and circumstances of the case it is further directed that the surety shall be the local surety of District-Bastar (C.G.).