

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19946 of 2015

Arising Out of PS.Case No. -718 Year- 2014 Thana -GOVERNMENT OFFICIAL COMP. District-
PATNA

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1. Md. Furkan son of Sri Anusana, Village- Moijing Kanjaibuan, P.O., P.S.
and District- Thoubal, Manipur

.... Petitioner/s

Versus

1. The Union of India through Directorate of Revenue Intelligence,
Regional Unit, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Brahma Deo Prasad

For the Opposite Party/s : Mr. Sanjay Kumar (Asg)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

7 27-10-2015 Heard learned counsel for the petitioner as well as

learned counsel, appearing for the Union of India.

1.843 kg Heroin worth Rs. 11 lacs was recovered

from conscious possession of the petitioner but submission on

behalf of the petitioner is that the chemical examination report

does not disclose the percentage of morphine and Section-2(xv)

says that less than 0.2 percent of morphine substance will not

come under the definition of opium derivatives.

Learned counsel referred a decision reported in **2011**
CRI. L.J. 4237 (The state of Himachal Pradesh VS Ashwani
Kumar & Anr.) in which, the aforesaid point was considered by

Division Bench of Hon'ble Himachal Pradesh High Court.

It is further contended on behalf of the petitioner that Section-50 of the NDPS Act has not been complied with and, therefore, petitioner is entitled to get the privilege of bail. In support of his contention, he referred order dated 13-11-2014 passed by a coordinate bench of this court in Cr. Misc. No. 26193 of 2014 and analogous cases.

On the other hand, learned counsel, appearing for the Union of India vehemently, opposed the prayer pointing out that trial of the petitioner is going on in full swing and there is every possibility of conclusion of trial of the petitioner in near future.

Admittedly, after seizure of the alleged substance from conscious possession of the petitioner, the sample of the aforesaid substance was sent for chemical examination and after chemical examination, the chemical examiner found the seized substance Heroin. So far as the application of Section-2(xv) as well as Section-50 of the NDPS Act are concerned; in my view, the same are not applicable at the time of consideration of bail because there is specific provision of Section-37 of the NDPS Act which gives discretion to the court to come to the satisfaction that after being released from the custody, the accused shall not commit the similar offence and, therefore, in my view, Section-50 as well as Section- 2(xv) of the NDPS Act shall be considered by

the trial court in course of trial.

Accordingly, prayer for bail of the petitioner in connection with Special Case No. 15 of 2014 arising out of D.R.I. Case No. 718(ii) of 2014 pending in the court of learned Additional District & Sessions Judge-VII-cum-Special Judge, Patna stands rejected.

However, learned trial court is directed to conclude the trial of the petitioner as early as possible, preferably, within four months from the date of receipt/production of copy of this order.

(Hemant Kumar Srivastava, J)

A.K.V./-

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