

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8263 of 2016

Arising Out of PS.Case No. -48 Year- 2015 Thana -SURYAPURA District- SASARAM (ROHTAS)

=====

Vinay Kumar Paswan son of Ram Bihari Paswan, resident of Village-
Dharmagatpur, Police Station- Suryapur, District- Rohtas

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary

For the Opposite Party/s : Mr. Pushpa Sinha(App)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

06/ 19-05-2016

Heard learned counsels for the petitioner and

the State.

The present application has been filed with a prayer for bail in a case registered under Sections 20(B), (II)(C) and 22(A) of the NDPS Act, though, it ought to be under Sections 20(b)(ii)(c) and 22(a) of the Act.

The prosecution case as per the written report of Arun Kr. Singh, Sub-Inspector of Police, Surjpura, is to the effect that from a plastic bag hanging from the shoulder of the petitioner, two hundred sachets of brown colored powder, suspected to be Heroine were seized, leading to the registration of Surjpura P.S. Case No. 48 of 2015 against the petitioner only.

Since accusation has been levelled under Section 20(b) of the NDPS Act, which is weight based offence and

the F.I.R. did not reflect the weight of the alleged seized contraband. Hence, this Court vide order dated 19.02.2016, called for the case diary of Surjpura P.S. Case No. 48 of 2015.

On receipt of the case diary, the matter was taken up on 18.03.2016 when the learned A.P.P. submitted that the final report (charge sheet) has been submitted against the petitioner, though the investigation has been kept pending for the purposes of transmitting the samples of the seized contraband to the FSL, but the investigating agency has not bothered to record the weight of the seized contraband in the entire case diary.

In the circumstances indicated above, this Court directed the S.P., Rohtas to submit a report in this regard through some responsible officer. It was also recorded that it is expected from S.P., Rohtas, Sasaram, to take needful action against concerned I.O. and not to hand over the investigation of cases registered under the NDPS Act to such police officers.

The matter was adjourned to 19th of April, 2016 but was wrongly recorded as 19th of July, 2016. Since the next date was correctly uploaded in the computer the matter was listed on 20.04.2016 but no report was submitted by S.P., Rohtas, Sasaram. Hence, S.P., Rohtas was directed to be present in Court on 2nd of May, 2016 with an affidavited show cause reflecting in

detail the needful action being taken against the I.O. in this case.

On 2nd May, 2016, a letter of S.P., Rohtas dated 01.05.2016 was produced suggesting his unableness to be present in Court due to ensuing Panchayat elections, though the letter suggested that an enquiry has been initiated against the I.O.

On 3rd of May, 2016, the S.P., Rohtas, appeared before the Court but without show cause and informed that an enquiry against the I.O. has been entrusted to S.D.P.O., Bikramganj, on conclusion of the same needful action will be taken against the I.O. and concerned officer.

On prayer of S.P., Rohtas, the matter was adjourned for 16th of May, 2016, with the following direction:-

“It is expected from the S.P., Rohtas to submit the report on affidavit stipulating all such cases registered under Section 20(b) of the NDPS Act, where the weight of the seized contraband has not been mentioned/recorded.”

The matter was taken up on 16th of May, 2016, and an affidavit show cause dated 13.05.2016 on behalf of S.P., Rohtas, was filed, stipulating that the seized contraband was weighed on 09.05.2016 in presence of Mr. Rajiv Ranjan Kumar, Block Development Officer, Suryapura and it is found that the weight of the seized contraband is 52 grams.

Secondly, departmental proceeding has been initiated against the S.H.O. and I.O. Thirdly, the I.O. of the case has been changed and Circle Inspector, Bikramganj has been appointed as new I.O. of the case. Paragraph numbers 4, 5 and 6 of show cause read as follows:-

4. ***“That, it is respectfully submitted that the actual weight of the “Heroine” seized from the possession of the petitioner has been taken in presence of the Block Development Officer, Rajiv Ranjan Kumar of Suryapura Block. On weightment, the total weight of the “Heroine” (200 sachets) become 52 (Fifty two) grams.***
5. ***That, further it is respectfully submitted that against the then S.H.O. and I.O. of the case S.I. Mahesh Prasad Sah and A.S.I. Arun Kumar Singh informant of the case, departmental proceeding no. 10/16 and 11/16 respectively has been started against them.***
6. ***That the I.O. of the case has been changed and Circle Inspector of Bikramganj Sri Vijay Kumar Gupta has been appointed as new I.O. of the case.”***

The above narrative reflects how the police in the State of Bihar is registering and investigating the cases under NDPS Act. The show cause is absolutely not in consonance with the direction of this Court, as it does not stipulate the description



of all such cases where the weight of seized contraband has not been recorded, reason for not taking weight or transmitting the sample to FSL till date and the purpose of change of I.O. when the investigation has been concluded for all practical purposes. The show cause reflects that neither the I.O. nor the S.P., Rohtas, had been concerned with the procedural safeguards incorporated under the NDPS Act or they deliberately chose not to follow the same.

The section 57 of the NDPS Act mandates report of arrest and seizure within 48 hours next after such arrest or seizure and to make a 'full report' of all particulars of such arrest or seizure to his immediate superior officers. Full report includes the weight of seized contraband. In the present case the seizure was made on 02.07.2015, the weight of the seized contraband was taken on 09.05.2016 without making an order for further investigation as the final report was submitted against the petitioner on 27.09.2015 and the investigation was only kept pending for the purposes of transmitting the sample of the seized contraband to the FSL.

It appears from the materials available on the record that the sample of the seized contraband has not been transmitted to the FSL till date.

In the circumstances described above, it



appears that the cases under the NDPS Act are in the State of Bihar neither registered nor investigated properly. This Court has come across several such cases where weight of the seized contraband is deliberately not recorded. Samples are either not transmitted to the FSL or are being transmitted months and year after the seizure and the final report are submitted without FSL report, resulting into the failure of case during trial. Similar is the case registered under section 20(a) of the NDPS Act, where 'cultivation' of any cannabis plant is non weight base offence but deliberately the informant and I.O. neither record the description of plot from which seizure is made nor try to verify the recorded owner of the land or the possession of the person concerned.

It is high time that D.G.P., Bihar should rise to the occasion, take needful action against all such erring officers, particularly under Section 59 of the NDPS Act, get the data collected where above mentioned lapses are being made and issue necessary directions to all concerned with elaborated detail of the procedural safeguards to be followed for registration and investigation of the cases as per the provisions of the NDPS Act. Such direction should include the letters, executive instructions and circulars issued by the Narcotics Control Bureau from time to time in this regard.

Considering the seized quantity of the contraband between small and commercial, the serious lapses made by the informant and investigating agency by not recording the weight of seized contraband, statement made in paragraph 3 of the petition to the effect that petitioner has no criminal antecedent and the investigation being concluded, this Court is constrained to direct the release of the above named petitioner on bail, on furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge IIIrd, Rohtas at Sasaram in connection with Suryapura P.S. Case No. 48 of 2015.

Let a copy of this order be transmitted to D.G.P., Bihar and S.P., Rohtas for the needful.

The learned court below will be at liberty to cancel the bail bond of the petitioner, if he defaults for three consecutive occasions or gets substantially involved in similar nature of offence.

(Dinesh Kumar Singh, J)

DKS/-

U		T	
---	--	---	--