

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36445 of 2016

Arising Out of PS.Case No. -120 Year- 2016 Thana -BAHERA District- DARBHANGA

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Md. Gulfam Khan, son of Md. Safidul Khan, resident of village- Basuham, P.S.-
Bahera, District- Darbhanga.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar No.13, Advocate

For the Opposite Party/s : Mr. Rohit Kumar, Advocate

For the State : Mrs. Dr. Indihar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-08-2016

This application is for grant of bail on behalf of the petitioner, who is in custody in connection with Bahera P.S. Case No.120 of 2016 dated 30.4.2016 registered under Sections 20, 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. According to the prosecution case, on 30th April, 2016, at about 11 a.m., a person was found moving in suspicious condition. The police party apprehended him and, on search, 500 grams Ganja is alleged to have been recovered from his possession.

3. The prayer for bail of the petitioner was earlier rejected by this Court vide order dated 6.7.2016 passed in Cr.Misc. No. 24945 of 2016 on merits, but the present application has been filed on a

totally different ground.

4. It is submitted by the learned counsel for the petitioner that the maximum punishment prescribed for the offences alleged against the petitioner is one year and the police, admittedly, failed to submit their report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') within sixty days and, as such, the petitioner became entitled to be released on bail in terms of the provision prescribed under Section 167(2)(a)(ii) of the CrPC. It is submitted that an application was filed in the court of Special Judge, Darbhanga for compulsive bail, which was rejected, vide order dated 2.7.2016, in view of the provision prescribed under Section 36A(4) of the NDPS Act. It is submitted that the aforesaid Section 36A(4) of the NDPS Act has got no application to the facts and circumstances of the present case.

5. Learned counsel for the State has opposed the application for grant of bail on merits. However, he concedes that in view of the mandatory nature of the provision prescribed under Section 167(2)(a)(ii) of the CrPC, the petitioner had become entitled for bail on accomplishing sixty days in custody, as the Investigating Officer had failed to submit police report under Section 173(2) of the CrPC.

6. I have heard learned counsel for the parties and perused the record.



7. The petitioner is alleged to be in custody since 1.5.2016. On 2nd July, 2016, he had filed an application under Section 167(2)(a)(ii) of the CrPC for compulsive bail. The court below has recorded in the impugned order that the statutory period of sixty days came to an end on 30th June, 2016 and the police report was not submitted in the court till then. The offences under which the petitioner is being prosecuted are under Sections 20, 21 and 22 of the NDPS Act. The notification issued under the NDPS Act would make it evident that recovery of 'Ganja' upto 1000 grams would come within the limit of small quantity.

8. In the present case, the recovery alleged is of only 500 grams 'Ganja' from possession of the petitioner. Thus, in terms of Section 20(b)(ii)(A) of the NDPS Act, the maximum punishment which can be awarded to the petitioner would be one year. Similarly, for contravention in relation to offences defined under Sections 21 and 22 of the NDPS Act involving small quantity, the maximum punishment which can be awarded is one year.

9. In that view of the matter, learned counsel for the petitioner is right in his submission that there would be no application of Section 36A(4) of the NDPS Act, which deals with the offences punishable under Sections 19, 24 and 27A of the NDPS Act. Those offences are not alleged against the petitioner and, hence, refusal of

bail to the petitioner on that ground by the court below is apparently bad in the eyes of the law.

10. Accordingly, the impugned order dated 2.7.2016 passed in G.O.Case No.5 of 2016 is set aside.

11. The petitioner, namely, Md. Gulfam Khan, is directed to be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge/ Sessions Judge, Darbhanga in connection with Bahera P.S. Case No.120 of 2016.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	