

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12419 of 2015

Arising Out of PS.Case No. -282 Year- 2014 Thana -BAHADURGANJ District- KISANGANJ

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1. Raj Kumar Yadav Son of Dukhan Prasad Yadav Resident of village - Pachahara Post Office - Doghariya.
 2. Md. Sabir Alam Son of Late Ataur Rahman Resident of village + Post Office - Doghariya, Both of Police Station - Kochadhaman District - Kishanganj.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shanker Pankaj

For the Opposite Party/s : Mr. Ram Chandra Sahni(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

07/ 29-09-2016

Heard learned counsels for the petitioners
and the State.

The petitioners are languishing in custody since 11.12.2014 in a case registered for the offences punishable under Sections 22, 23 and 24 of the NDPS Act.

The prosecution case is that on 10.12.2014 the informant being the Sub Inspector of SSB, 12th Bahini, Kishanganj Camp Sidhimari received secret information that two persons are carrying narcotics through Naz Travels Bus bearing Registration No. BR11J 8553 running from Terhagach to Bahadurganj. The bus was intercepted on Araria road near bridge

and search was made. During search two persons tried to escape from the bus, who were intercepted, and from beneath of their seat a plastic bag containing 12 kgs. 400 grams opium were recovered. The sample was drawn and transmitted to the FSL leading to the registration of the case.

It is submitted by learned counsel for the petitioners that only on suspicion the petitioners have been made accused. There is no recovery from the possession of the petitioners. Moreover, the FSL report suggests that the sample was found to be Nicotine, which is derived from plant Nicotiana tobaccum.

Mr. J.N. Thakur, learned counsel for the State is permitted to unseal the FSL report and from perusal of the FSL report it is transpires that the FSL report suggest the seized sample as Nicotine, an addictive intoxicating substance.

It is submitted by learned counsel for the petitioners that Nicotine is neither incorporated in the table of the NDPS Act prepared under Su-clause VIIA and XIII A of Section 2 of the Act which not only prescribes the name of the Narcotic Drugs and Psychotropic Substances, but their chemical component and the quantity suggesting the small and commercial quantity under the NDPS Act. The Nicotine is also not under the Schedule

of the Act which stipulates the list of Psychotropic Substances under Clause XIII of Section 2 of the Act nor it is in the Schedule I of NDPS Rules under Rules 53 and 64 which contains the names of different Narcotic Drugs and Psychotropic Substances. Hence, no case under NDPS Act is made out.

Hence, the embargo for granting bail as stipulated under Section 37 of the NDPS Act will also not apply, firstly on the ground that though the case is registered under Section 24 of the NDPS Act which stipulates punishment for external dealings in Narcotic Drugs and Psychotropic Substances in contravention of Section 12 of the NDPS Act but since the accusation does not constitute an offence of external dealing of narcotic drugs or psychotropic substances in contravention of Section 12 of the NDPS Act hence no offence under Section 24 of the Act is made out and secondly that since the sample does not suggest that the seized contraband was narcotic drugs or psychotropic substance, hence, there is no question of application of any embargo stipulated under Section 37 of the NDPS Act.

A statement has been made in paragraph 3 of the petition that the petitioners have no criminal antecedent.

Mr. J.N. Thakur, learned counsel for the State does not controvert this fact that the FSL report does not suggest

that the seized contraband was narcotic drug and psychotropic substance.

Considering the aforesaid facts, let the above named petitioners, be released on bail on furnishing bail bonds of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Sessions Judge –cum- Special Judge, Purnea in connection with Bahadurganj P.S. Case No. 282 of 2014.

Let the learned APP handover the FSL report to the Court Master for sealing it so that it may be returned to concerned authority.

(Dinesh Kumar Singh, J)

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