

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 27202 of 2016

Arising Out of PS.Case No. -560 Year- 2015 Thana -BARACHATTI District- GAYA

Dulla Yadav son of Horil Yadav Resident of Village- Panchmadhav ,
Police Station Barhi, District Hazaribagh

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

with

Criminal Miscellaneous No. 28717 of 2016

Arising Out of PS.Case No. -560 Year- 2015 Thana -BARACHATTI District- GAYA

Ranjeet Kumar Pandey Son of Late Badri Pandey Resident of village-
Pandey Bara, P.S. Chauparan, District-Hazaribagh (Jharkhand)

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

(In Cr.Misc. No.27202 of 2016)

For the Petitioner/s : Mr. Dharendra Kr. Sinha
Mr. Satyendra Narayan

For the Opposite Party/s : Mr. Braj Kishore Prasad

(In Cr.Misc. No.28717 of 2016)

For the Petitioner/s : Mr. Sanjay Kumar Jha

For the Opposite Party/s : Mr. Arun Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

6. 29-11-2016 Since in both the petitions, petitioner(s) are in custody in Barachatti P.S. Case No. 560 of 2015, both the petitions were heard together and are being disposed of by this common order.

Heard Sri Dharendra Kumar Sinha, learned counsel

assisted by Sri Satyendra Narayan, learned counsel for the petitioner and Sri Braj Kishore Prasad, learned Addl. Public Prosecutor (in 1st case i.e. Cr. Misc. No. 27202 of 2016) as well as Sri Sanjay Kumar Jha, learned counsel for the petitioner and Sri Arun Kumar Pandey, learned Addl. Public Prosecutor (in 2nd case i.e. Cr. Misc. No. 28717 of 2016).

The petitioner in the 1st case is the *Driver* and petitioner in the 2nd case is *Khalasi* of a Truck, bearing registration no. *RJ19GB-0847*. They were apprehended by the police on an accusation of recovery of 20 Kg. of *Ganja* from the cabin of the truck. From the F.I.R., it is evident that some secret information was received by the police that *Ganja* was being carried on a vehicle, thereafter, the truck was intercepted, which was coming from a forest and on search, from the cabin in a bag, number of packets total weighing 20 Kg. of *Ganja* was recovered and thereafter, petitioner(s) were arrested and they are in custody since 24-12-2015.

Sri Dharendra Kumar Sinha, learned counsel for the petitioner (in 1st case), while pressing the petition for bail, submits that entire prosecution story is not sustainable. He submits that in the entire case diary, there is no statement of the seizure list witnesses, whereas, it was alleged that after the



seizure, two independent witnesses had put their signature on the seizure list. He has further argued that in the present case, despite the fact that recovery of *Ganja* was effected on 23-12-2015, it was earlier never sent to the Forensic Science Laboratory for its examination. By way of referring to order of this Court passed earlier, he submits that this Court had noticed about non-sending of the seized articles for its examination, thereafter, the concerned Superintendent of Police was directed to appear and file affidavit. It has also been argued that in the F.I.R., it was alleged that about 20 Kg. of *Ganja* was recovered. According to Sri Sinha, learned counsel for the petitioner, if there is no certainty, it will be presumed that the recovered *Ganja* was less than commercial quantity and as such, Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “NDPS Act”) will not come in way in granting bail to the petitioner. It has also been argued that petitioner is having clean antecedent and he is languishing in jail since long.

Similarly, Sri Sanjay Kumar Jha, learned counsel for the petitioner (in 2nd case i.e. Cr. Misc. No. 28717 of 2016) has argued regarding false implication. He submits that petitioner in the 2nd case was only a *khalasi* and he was not at all aware about carrying of *Ganja* in the cabin of the truck. According to Sri Jha,

the petitioner is innocent and he has falsely been implicated. He has also advanced same argument, which was advanced by Sri Sinha.

Learned Addl. Public Prosecutors have opposed the prayer for grant of bail. It was argued by learned Addl. Public Prosecutors that it was not a case of recovery of article like *Heroin* or *Brown Sugar*, but it is specific case that *Ganja* was recovered. They accept that some delay has occurred in sending the seized sample for the examination to the Forensic Science Laboratory, but fact remains that from conscious possession of both the petitioners from the cabin of the truck, huge quantity of *Ganja* weighing 20 Kg. was recovered and as such, they are not entitled for bail.

Besides hearing, I have also perused the materials available on record. So far as argument, which has been advanced by the learned counsel for the petitioner(s) that in case of sending sample for F.S.L. examination beyond three months, the conviction can be set aside, the Court is of the opinion that such argument can well be appreciated at appropriate stage, not at the stage of grant of bail. It is a fact that earlier, the Superintendent of Police, Gaya, as per direction of this Court, had appeared before this Court and she had filed an affidavit and in

the affidavit, it has categorically been stated that with the permission of the learned court below, the sample has already been sent to the F.S.L., Patna for its examination.

So far as quantity of recovered articles is concerned, on the record, there is specific fact that 20 Kg. of *Ganja* was recovered. Meaning thereby that it was a commercial quantity and as such, there is restriction in extending the privilege of bail, in view of Section 37 of the NDPS Act.

With regard to the stand taken by learned counsel for the petitioners that the seizure list witnesses were not examined and their statement is not appearing in the case diary, the Court is of the opinion that seizure list witnesses can be examined during the trial to establish the fact as to whether in their presence, the seizure was conducted or they have put their signature on seizure list. In any event, those facts have got no relevance for the purposes of considering bail petitions.

Considering the fact that recovery of *Ganja* was of commercial quantity, there is no reason to extend the privilege of bail.

Both the bail petitions stand dismissed.

Keeping in view the fact that petitioner(s) are in custody since 24-12-2015, it is desirable to observe that learned

court below may taken appropriate step so that the case may
come to its logical end without unnecessary delay.

(Rakesh Kumar, J.)

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