

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17876 of 2017

Arising Out of PS.Case No. -5 Year- 2016 Thana -SIKTA District-
WESTCHAMPARAN(BETTIAH)

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Mohan Patel, Son of Late Chhathu Patel, Resident of village - Shyampur
Kotraha, Police Station - Nautan, District - West Champaran

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No.-7

For the Opposite Party/s : Mr. Sri Manish Kumar 2

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

02/ 30.08.2017

Heard Mr. Srinandan Singh, learned counsel

for the petitioner and Mr. J.N. Thakur, learned counsel for the
State.

The petitioner has renewed the prayer for bail
in a case registered for the offences punishable under Sections 20,
22, 23, 25A and 27A of the NDPS Act.

The prosecution case is that the informant,
being Head Constable of 13th Battalion, SSB, intercepted the
petitioner while coming from Nepal leading to recovery of two
bags containing 17 kilograms Ganja. The petitioner confessed that
he purchased the Ganja from Nepal and was bringing the same to
India for sale.

It is submitted by learned counsel for the



petitioner that the FIR was registered on 30.01.2016, sample of seized contraband was transmitted to FSL but without the FSL report, final form (charge sheet) was submitted.

This Court earlier rejected the prayer for bail of the petitioner vide order dated 31.08.2016 passed in Cr. Misc. No. 29594 of 2016 and directed the Director, FSL to transmit the FSL report forthwith to the learned trial Court. The learned trial Court was also directed to make all efforts to get the FSL report before the conclusion of the trial and the petitioner was given liberty to renew the prayer for bail if the FSL report does not suggest that the seized contraband is Ganja. The counsel for the petitioner has brought on record the requisition, as contained in Annexure-6 to the supplementary affidavit, submitted before the learned Court below dated 21.08.2017, which reflects that still the FSL report has not been received by the learned Court below. It is further submitted that though the case is also registered under Section 27A of the NDPS Act and the final form (charge sheet) has also been submitted under the said Section, hence the earlier bail application was rejected on the ground that since there is embargo under Section 37 of the NDPS Act for grant of bail in case of recovery of commercial quantity and registration of the case under Sections 19, 24 and 27A of the NDPS Act. Though,



from perusal of the FIR it appears that there is no accusation under Section 27A of the NDPS Act. However, in spite of the fact that the FIR has been registered also under Section 27A of the NDPS Act and final form (charge sheet) has been also submitted under the said section, the charges have not been framed under Section 27A of the NDPS Act, which gets reflected from the impugned order dated 06.05.2016, passed by learned Additional Sessions Judge II, West Champaran, Bettiah but also certified copy of the order of framing charge which has been brought on record by way of supplementary affidavit, contained in Annexure-5, which reflects that the charges have been framed under Sections 20(b)(ii), 8, 22(b), 23(b) of the NDPS Act. Hence, at present, the embargo of Section 37 of the NDPS Act will not apply to the case of the petitioner, who is languishing in custody since 31.01.2016 and petitioner has no criminal antecedent, statement to that effect has been made in paragraph 3 of the petition. Moreover, no witness has been examined till date.

Mr. J.N. Thakur, learned counsel for the State submits that though he has not received instruction with regard to receipt of the FSL report before the learned trial Court but from the certified copy of the requisition brought on record as Annexure-6, it appears that it has not been received by learned



Court below. However, learned APP does not controvert this fact that the charges have not been framed under Section 27A of the NDPS Act.

Considering the rival submissions of the parties, this Court is dismayed to find that while rejecting the earlier prayer for bail of the petitioner vide order dated 31.08.2016 passed in Cr. Misc. No. 29594 of 2016, the Director, FSL was directed to transmit FSL report forthwith to the learned Court below and the learned Court below was also directed to make all efforts to get the FSL before conclusion of the trial. The relevant portion of the order dated 31.08.2016 passed in Cr. Misc. No. 29594 of 2016 reads as follows:-

“So far as delay in transmitting the sample of seized contraband is concerned, the petitioner will be at liberty to take that plea during trial. It is expected from the Director, FSL to transmit the FSL report forthwith to the learned trial Court. The learned trial Court is also expected to make all efforts to get the FSL report before the conclusion of the trial. However, the petitioner will be at liberty to renew his prayer for bail if the FSL report does not suggest that the seized contraband was ganja.”



In spite of the specific direction, the FSL report has not been transmitted as yet.

Earlier this Court rejected the payer for bail of the petitioner only on the ground that the case was registered under Section 27A of the NDPS Act also, hence, in view of the embargo under Section 37 of the Act with regard to grant of bail in a case registered under Sections 19, 24 and 27A of the NDPS Act or on recovery of the commercial quantity. This is not in dispute that charge has not been framed under Section 27A of the NDPS Act. Section 27A of the Act prescribes the punishment for financing illicit traffic or harbouring the offenders. Section 27A of the Act reads as follows:-

“27A- Punishment for financing illicit traffic and harbouring offenders- whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.



Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

From perusal of the FIR it appears that there is no accusation of financing illicit traffic or harbouring the offenders. Hence, in view of the non-accusation under Section 27A of the Act in the FIR and non-framing of charge under Section 27A of the Act, it appears doubtful that the embargo of Section 37 of the Act will apply to the present case. Moreover, the recovery of the contraband is between small and commercial quantity.

Considering the fact that the final form (charge sheet) was submitted without FSL report and till date it has not been transmitted to the learned Court below, as a result of which till date the learned trial Court is not aware about the fact that the seized contraband is Ganja or not, moreover, the recovered quantity is between small and commercial one and keeping in view the fact that there is no likelihood of trial being concluded in near future coupled with the period of custody of the petitioner and statement made in paragraph 3 of the petition that the petitioner has no criminal antecedent, let the above named petitioner, be released 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-2nd, West Champaran at Bettiah in connection with Trial No. 14 of 2016, N.D.P.S. Case No. 03 of 2016 arising out of Sikta P.S. Case No. 05 of 2016.

The learned trial Court will be at liberty to cancel the bail bonds of the petitioner, if he defaults for two consecutive occasions or substantially gets involved in similar nature of offence.

It is made clear that any observation or finding made in the present order will not have any binding effect during trial.

(Dinesh Kumar Singh, J)

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