

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43866 of 2016

Arising Out of PS.Case No. -75 Year- 2015 Thana -AMBA District- AURANGABAD

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Niraj Kumar Singh Son of Late Charitar Singh resident of Village- Baratola,
P.S.- Daltonganj, District- Palamu, State- Jharkhand.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Soni Shrivastava

For the Opposite Party/s : Mr. Sri Chandrasen Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

04/ 26-07-2017

Though, the matter is listed in today's cause

list at serial no. 148, the matter is being taken up out of turn hearing on the basis of mentioning slip filed by learned counsel for the petitioner.

The petitioner has renewed the prayer for bail in a case registered for the offences punishable under Section 29 of the NDPS Act and sections 2(E), 3(8), 15 and 18 of the Bihar Excise (Mahua Flowers) Rules, 2006.

The prosecution case is that on secret information being received to the effect that narcotics were being transported on two pick-up vans, when raid was carried out, leading to recovery of 35 bags weighing 27 kilograms of doda (poppy straw) and 8 bags weighing 45 kilograms each of Mahua



flower from one pick-up van, whereas, from the other pick-up van 12 bags weighing 45 kilograms each of Mahua flower and 30 bags weighing 27 kilograms of doda (poppy straw) were recovered. The petitioner is the driver of one of the vehicles.

It is submitted by learned counsel for the petitioner that the seized contraband was not sent to the FSL. On such statement being made, vide order dated 21.06.2017, this Court directed the counsel for the State to file counter affidavit.

A counter affidavit has been filed today on behalf of S.P., Aurangabad, making statement therein that after order of this Court, the investigation agency came to know that the samples of the seized contraband have not been transmitted to FSL and hence, the samples have now been transmitted to FSL, Patna and Kolkata on 03.07.2017 and departmental proceeding has been initiated against the I.O. and other concerned police officers.

Paragraph no. 5 of counter affidavit reads as follows:-

“That it is humbly submitted that the S.H.O. Amba Police Station vide Memo No. 845 dated 04.07.2017 has also sent a report to the answering opposite party, stating therein that he has recently joined in Amba Police Station as S.H.O. on 09.06.2017 and thereafter he reviewed the case diary of pending cases of serious nature and in course of its reviewing the case diary and other materials of Amba P.S. Case No. 75/15 dated 13.09.15 was made available by the I.O. of this case and from its perusal



it transpired that the seized exhibit (contraband) of this case has not been sent to the F.S.L., Patna and Kolkata. As soon as the matter came to his knowledge, he directed/ordered the I.O. of this case orally to send the seized exhibit (contraband) to the F.S.L. Patna and Kolkata for its examination after obtaining the order in this regard from the concerned learned court. Thereafter the seized exhibit and forwarding report of Amba P.S. Case No. 75/15 (contraband) has been sent to the F.S.L. Patna and Kolkata for its examination after obtaining permission/order from the learned court vide Amba P.S. case Memo No. 836/17 dated 03.07.17 through S.I. of Police, Gauri Shankar Singh.”

Hence, it is further submitted by learned counsel for the petitioner that the very non-transmission of the samples to the FSL vitiates the entire prosecution case.

A statement has been made in paragraph 3 of the petition that the petitioner does not have any criminal antecedent. Moreover, the charge has still not been framed, hence there is no likelihood of conclusion of trial in near future.

Mr. J.N. Thakur, leaned counsel for the State submits that, though, the samples were not transmitted to FSL earlier, but now it has been transmitted and proceeding has been initiated against the officers concerned. Though, there is recovery of commercial quantity of the poppy straw, however, it has not



been ascertained till date that seized contraband is narcotic.

Having heard the counsels for the parties it appears that the FIR was registered on 13.09.2015 whereas the samples have been transmitted to FSL, Patna and Kolkata on 03.07.2017 after order of this Court dated 21.06.2017, which is in complete contravention of the provisions of the NDPS Act. The trial is not likely to be concluded very shortly as the report of the learned 1st Additional Sessions Judge, Aurangabad, dated 06.04.2016, reflects that the charges have not been framed and above all, the counsel for the petitioner also submits that the charge has still not been framed.

Learned APP is unable to defend the conduct of the I.O. and the prosecution agency.

Moreover, the earlier prayer for bail of the petitioner was rejected, vide order dated 22.02.2016, passed in Cr. Misc. No. 4324 of 2016, with a direction to the learned court below to expedite the trial but no effort has been taken.

Considering the fact that for about three years the sample of seized contraband has not been sent to FSL, hence, it has not been ascertained till date that seized poppy straw is doda, moreover, by now the samples of the contraband must have lost their potential character.



In the circumstances, since till date it has not been ascertained that seized contraband is narcotic, hence, this Court is doubtful about the application of rigorous of Section 37 of the NDPS Act, there is no chance of trial being concluded in near future coupled with statement in paragraph no. 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 Ist Additional Sessions Judge, Aurangabad in connection with Amba P.S. Case No. 75 of 2015.

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

(Dinesh Kumar Singh, J)

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