

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15366 of 2017

Arising Out of PS.Case No. -265 Year- 2015 Thana -SIKARPUR District-
WESTCHAMPARAN(BETTIAH)

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Jagdev Patel @ Jagdeo Patel, Son of Gothul Patel, Resident of Village-
Singhpur, P.S.-Sathi, District- West Champaran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mira Kumari

For the Opposite Party/s : Mr. Sri Ataur Rahman

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 02.08.2017

Heard Mr. Suraj Narain Sinha, learned senior
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 and 24 of the NDPS Act.

The prosecution case is that the petitioner and
one Shyam Babu Patel were intercepted while travelling on
motorcycle with two bags from which 27 kgs. of Ganja were
recovered.



It is submitted by learned counsel for the petitioner that, though, the earlier bail application of the petitioner was rejected vide order dated 07.09.2016 passed in Cr. Misc. No. 9750 of 2016 on the ground of recovery of commercial quantity of contraband, and the case being registered also under Section 24 of the NDPS Act. The prayer for bail of the similarly situated accused Shyam Babu Patel was rejected, but he renewed the prayer for bail vide Cr. Misc. No. 32599 of 2016, on the ground that the samples of the seized contraband was never transmitted to FSL and a co-ordinate Bench of this Court after perusing paragraph 8 of the supplementary case diary recorded on 05.02.2016, came to the conclusion that the samples were not transmitted to FSL, and granted bail to co-accused Shyam Babu Patel vide order dated 08.02.2017. The relevant portion of the order reads as follows:-

“Again the bail is sought on the ground that petitioner was taken into custody on 27.06.2015 but up till now the seized articles have not been not sent for chemical examination, and, therefore, it is difficult to say as to whether the seized article is ganja or not. It is further submitted that moreover, the petitioner has remained into custody since long and does not have any criminal antecedent. Para 8 of the case



supplementary case diary 05.02.2016 goes to show that up till now the seized articles have not been sent for chemical examination particularly in the circumstances when the alleged recovery was made on 27.06.2015.

It is obvious from the aforesaid facts that more than 1 ½ yeas have passed but the seized articles have not been sent for the chemical examination.

Considering the aforesaid facts and circumstances as well as the period of detention into the custody, let the petitioner, above named, 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 the learned Additional Sessions Judge, Ist, West Champaran, Bettiah in connection with Sikarpur P.S. Case No. 265 of 2015, Trial No. 26 of 2015, subject to the condition that if the petitioner is caught in future with any narcotic substance and another case is lodged against him for the offences under the N.D.P.S. Act, leaned Trial Court shall be at liberty to cancel the bail bonds of the petitioner.”

Hence, it is submitted by learned senior counsel for the petitioner that since the seized contraband has not been ascertained whether it is narcotic or not, hence, the rigorous



of section 37 of the NDPS Act will not apply in the present case, particularly, on account that the seized contraband being commercial quantity or the case being registered under Section 24 of the NDPS Act. Moreover, from the accusation levelled in the FIR there is no accusation of exporting or importing of the contraband against the petitioner. A statement has been made in paragraph 3 of the petition that the petitioner has no criminal antecedent.

Considering the fact that the samples of the seized contraband has not been transmitted to the FSL, similarly situated accused has been granted bail coupled with the statement made in paragraph 3 of the petition that the petitioner is having 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-Vth, West Champaran at Bettiah in connection with Trial No. 26 of 2015 arising out of Sikarpur P.S. Case No. 265 of 2015.

However, the learned trial court will be at liberty to cancel the bail bonds of the petitioner in two eventualities i.e. if he defaults for two consecutive occasions or



substantially gets involved in similar nature of offence.

(Dinesh Kumar Singh, J)

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