

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39389 of 2017

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

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1. Awadhesh Shah @ Awadhesh Sah S/o Late Eshwar Shah, Resident of
Village- Mahuakhap, P.S.- Mahuakhap, District- Daltenganj (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Pd. Singh, Sr. Advocate
Mr. Mithilesh Kumar Singh, Advocate

For the Opposite Party/s : Mr. Sri Jagdhar Prasad, APP

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

2 30-08-2017 Heard learned counsels for the petitioner and the

State.

The petitioner has renewed his 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 Bihar
Excise (Mahua Flowers) Rules, 2006.

The prosecution case is that on secret
information being received that narcotics were being
transported on two pick-up vans, raid was carried out leading
to recovery of 35 bags each weighing 27 kilograms of doda
(poppy-straw) and 8 bags each weighing 45 kilograms of
Mahua flower from one truck and from the other truck 12 bags



each weighing 45 kilograms of Mahua flower and 30 bags each weighing 27 kilograms of doda (poppy-straw) were recovered. The petitioner was one of the drivers of the vehicles.

It is submitted by the learned Senior Counsel that the petitioner is languishing in custody since 13.9.2015. Statement has been made in paragraph 3 of the petition that the petitioner has no criminal antecedent. Earlier, the petitioner, co accused Niraj Kumar Singh and Ram Sewak Kumar preferred Cr. Misc. No. 4324 of 2016 with a prayer for bail which was dismissed vide order dated 22.2.2016 as contained in Annexure 1.

Subsequently, co accused Niraj Kumar Singh renewed his prayer for bail vide Cr. Misc. No. 43866 of 2016 and the said bail application was decided favourably on the ground that the seized contraband was not sent to the FSL. Since a counter affidavit was filed on behalf of the S.P., Aurangabad, making statement that after order of this Court dated 21.6.2017 passed in Cr. Misc. 43866 of 2016, the investigating agency came to know that the samples of the seized contraband could not be transmitted to FSL but subsequently on 3.7.2017 the samples were transmitted to



FSL, Patna and departmental proceeding were initiated against the I.O. and other concerned police officers. Paragraph no. 5 of counter affidavit filed in Cr. Misc. No. 43866 of 2016 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.”

Considering the fact that the case was registered on 13.9.2015 whereas the samples were transmitted to FSL, Patna and Kolkata on 3.7.2017 after order of this Court dated 21.6.2017 passed in Cr. Misc. No. 43866 of 2016 and hence, this fact was not ascertained whether the seized contraband was narcotic or not, co accused Niraj Kumar Singh has been granted bail vide order dated 26.7.2017 passed in Cr. Misc. No. 43866 of 2016.

The learned APP does not controvert this fact that samples were sent for chemical examination after two years of registration of the FIR. Hence, though there is recovery of commercial quantity of poppy straw, however, it has not been ascertained till date that seized contraband is narcotic substance.

Having heard the learned counsels for the parties, it appears that FIR was registered on 13.9.2015 whereas samples of seized contraband were transmitted to



F.S.L., Patna and Calcutta on 3.7.2017 after order of this Court which is in complete contravention of the provisions of the Act. It appears that after two years of seizure, the samples of seized contraband must have lost their potential character **and it has been** concluded without ascertaining that the seized contraband is narcotics or not. Hence, in such circumstances, this Court is doubtful about the application of rigorous of the provisions under section 37 of the NDPS Act.

Since the charge has not been framed, hence there is no likelihood of conclusion of trial in near future. A statement has been made in paragraph 3 of the petition that the petitioner has no criminal antecedent. In view of the above discussed facts, the case of the petitioner is not distinguishable from the case of co accused Niraj Kumar Singh, who has been granted bail

In view of the reasons discussed above, let the petitioner above named be released on bail on furnishing bail bonds of Rs.10000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge I, Aurangabad in connection with Amba P.S. Case No. 75 of 2015.

The learned court below will be at liberty to



cancel the bail bonds of the petitioner if he defaults without there being cogent reason on two consecutive occasions or if the petitioner gets involved in similar nature of offence.

(Dinesh Kumar Singh, J)

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