

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31937 of 2017

Arising Out of PS.Case No. -17 Year- 2016 Thana -CHAURADANO District-
EASTCHAMPARAN(MOTIHARI)

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Gajendra Giri, Son of Bhajan Giri, Resident of Village- Charmohna, P.S.-
Kawai, District- Bara (Nepal).

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tondon, Advocate

For the Opposite Party/s : Mr. J.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 15-11-2017

Heard Mr. Dilip Kumar Tondon, learned counsel
for the petitioner and Mr. J.N. Thakur, learned APP for the
State.

The petitioner has renewed the prayer for bail in
a case registered for the offences punishable under Sections
20(b), 22, 23 and 24 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (hereinafter referred to as the 'Act').

The prosecution case got initiated on the written
report of Vijay Kumar, Constable of 13th Batallion, S.S.B. to the
effect that on 22.02.2016 at 5.25 A.M. one motorcycle was



intercepted coming from Nepal side on the Indian Border near Mahuawa under Chhauradano P.S. of Raxaul Division of East Champaran district. The apprehended person was interrogated, who disclosed his name as Gajendra Giri, the petitioner and from his possession eight kilograms of ganja kept in two packets, one packet from the waist of the petitioner and another packet beneath the seat of the motorcycle were recovered.

It is submitted by learned counsel for the petitioner that the seizure list does not depict the signature of the petitioner, which reflects that the seizure has not been prepared in presence of the petitioner. Moreover, the embargo prescribed under Section 37 of the Act will not apply to the petitioner in spite of the fact that the case has also been registered under Section 24 of the Act, but from the accusation levelled, the offence under Section 24 of the Act is not made out and above all, this Court vide order dated 24.08.2016 passed in Cr. Misc. No. 26873 of 2016 rejected the prayer for bail of the petitioner, as contained in Annexure-1, with a direction to the learned trial Court to conclude the trial within a period of eight months and gave liberty to the petitioner to renew the prayer for bail if the trial does not get concluded within the stipulated time. It is further submitted that the trial has still not



concluded and petitioner is languishing in custody since 21.02.2016. A statement has been made in paragraph 3 of the petition that the petitioner has no criminal antecedent.

Mr. J.N. Thakur, learned APP submits that the recovery has been made from the petitioner.

Considering the rival submissions of the parties, there is no doubt that the recovery of ganja has been made between small and commercial quantity. The embargo prescribed under Section 37 of the Act prohibits grant of bail to the such accused against whom the case is registered under Sections 19, 24 and 27A of the Act and also if the recovery is of commercial quantity, unless the Public Prosecutor has been given an opportunity to oppose the prayer for such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. No doubt, the case has been registered also under Section 24 of the Act. Section 24 of the Act prescribes punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12, which reads as follows:-

“Section 24:- Punishment for external dealings



in narcotic drugs and psychotropic substances in contravention of section 12.- Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization granted under section 12, 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 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.”

The offence under Section 24 of the Act is made out when any person engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions of such authorization granted under section 12 of the Act. In the present case, it is not the case of prosecution that the ganja was obtained from outside



India and supplied to somebody outside India. It is the case that the informant suspected that the petitioner was coming from Nepal side and was intercepted on the Indian territory. Moreover, the petitioner on interrogation did not convey that he was going to supply the contraband outside India. The above facts suggest that as per the accusation levelled in FIR no offence under Section 24 of the Act is made out and hence, the embargo under Section 37 of the Act will not be applicable to the petitioner.

Considering the fact that in spite of specific direction given to the learned Trial Court, the trial has not concluded, petitioner is languishing in custody since 21.02.2016 coupled with the statement made in paragraph 3 of the petition that the petitioner has no criminal antecedent, moreover, the recovery of contraband is between small and commercial quantity, 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 Sessions Judge –cum- Special Judge, Motihari, East Champaran in connection with NDPS Case No. 10 of 2016 arising out of Chhauradano (Mahuawa) P.S. Case No. 17 of 2016.

The learned trial Court will be at liberty to



cancel the bail bonds of the petitioner, if he substantially gets involved in similar nature of offence or defaults for two consecutive occasions.

(Dinesh Kumar Singh, J)

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