

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4646 of 2018

Arising Out of PS.Case No. -3 Year- 2016 Thana -TANDWA District- AURANGABAD

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1. Umakant Dubey S/o Late Jagdish Dubey, R/o Village- Jhumar Bigha,
P.S.- Barun, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh

For the Opposite Party/s : Mr. Sri Amitesh Kumar

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

ORAL ORDER

3 09-05-2018

Heard.

The petitioner has renewed the prayer for bail in a case registered for the offence punishable under Section-414 of the Indian Penal Code, Sections-25(1-b)a, 26/35 of the Arms Act and Sections-20B-1, 23/25/27A/29 of the NDPS Act.

Prosecution case is that the informant who is SHO of Tandwa Police Station received secret information that on 13-01-2016 at about 4.15 AM, the petitioner Umakant Dubey, was at his in-laws house when the raid was laid, but Manju Devi, wife of the petitioner, obstructed the police force from entering into the house. In the meantime, the petitioner tried to escape with a bag. On search 2 Kg Ganja, 500 grams charas like material, a country made pistol, a motorcycle and a mobile set were recovered from



the petitioner.

It is submitted by learned Counsel appearing on behalf of the petitioner that the police have maliciously roped the petitioner in the present case, though, the petitioner is accused in ten other cases. In four cases, the petitioner has been acquitted of the charges. However, it was wrongly recorded in the order dated 03.08.2016, passed in Criminal Miscellaneous No.31085 of 2016 that the petitioner is accused in 10 cases, whereas, only six cases are pending against him at present. Moreover, the weight of seized 'Charas' is also wrongly recorded '50 grams' instead of '500 grams' in the impugned order dated 02-11-2016 passed by learned Additional Sessions Judge. The FIR has also been registered under section 27A of the Narcotic Drugs and Psychotropic Substances Act, which prescribes the punishment for financing, illicit traffic and harbouring but no accusation has been made in the first information report in this respect, and hence the embargo of Section 37 of NDPS Act will not apply. Hence, no offence under Section 27A of the Narcotic Drugs and Psychotropic Substances Act is made out. The recovery of both the 'ganja' and 'charas' is between small and commercial quantity.

Learned APP however submits that the petitioner is having criminal antecedents and there is recovery of fire-arms as well as Ganja and Charas.



Having heard learned counsels for the parties, it appears that for the first time, this court rejected the prayer for bail of the petitioner vide order dated 03-08-2016 passed in Cr. Misc. No. 31085 of 2016, on the ground that the petitioner has got criminal antecedent and thereafter, his prayer for bail was rejected second time vide order dated 06-09-2017 passed in Cr. Misc. No. 10979 of 2017 with liberty to the petitioner to renew his prayer for bail, if the trial does not get concluded within four months but it appears that till date, the trial is awaiting its conclusion. not concluded. Perusal of letter No. 70/2018 dated 20-04-2018 sent by learned Ist Additional Sessions Judge, NDPS Act, Aurangabad reflects that out of 12 charge sheeted witnesses, six witnesses have been examined and out of the remaining six prosecution witnesses, three are police personnel, whereas three are non official witnesses but they are not being produced in spite of reminders to the Superintendent of Police, Aurangabad. However, learned trial court has requested for extending time for conclusion of trial for further three months.

Considering the fact that the petitioner has been languishing in custody since 13-01-2016, the recovery of Ganja and Charas is between small and commercial quantity, the petitioner has been acquitted of the charges in four cases, however



he is on bail in rest six cases and the trial court in spite of direction of this court failed to conclude the trial of the petitioner, coupled with the fact that prima facie accusation does not constitute an offence under Section 27 of the NDPS Act so as to be covered by the embargo u/S 37 of the NDPS Act, 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 in connection with Tandwa P.S. Case No. 03 of 2016 G.R. No. 01 of 2016/05 of 2016 to the satisfaction of learned Ist Additional Sessions Judge, Aurangabad.

The learned court below will positively cancel the bail bonds of the petitioner, if, he defaults for two consecutive occasions during trial. The petitioner will not leave the district headquarter without the leave of the learned trial court and proper intimation to the Tandwa Police Station.

(Dinesh Kumar Singh, J)

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