

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27282 of 2018

Arising Out of PS. Case No.-6 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Jageshwar Prasad, S/o Late Hemlal Rai, R/o Near Model Public School,
Bankipur Gorak, P.S. Fatuha, District Patna.

... .. Petitioner

Versus

Union of India through Narcotics Control Bureau, Patna.

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Harsh Singh, Adv.
For the Opposite Party : Mr. S. D. Sanjay, (ASG)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

12 31-08-2018 Heard learned counsel for petitioner and learned
counsel for the State.

Petitioner, who is in custody, seeks bail in
connection with Special Case No. 37 of 2017 arising out of F.
No. NCB/PZU/V06/2017 registered for the offences punishable
under Sections 20(b) (ii) (c) and 29 of the NDPS Act.

Intelligence Officer, Narcotic Control Bureau,
Patna is the informant of this case, It has been alleged that on
25.02.2017 at about 4:00 P.M. a secret information was received
that a truck bearing No. WB 23B 0338 was coming from Orissa
and will be passing from Paswan Chowk, Hajipur on 26.06.2017



loaded with huge quantity of Ganja, above information was recorded in writing and communicated to the Zonal Director on whose direction a team was constituted which reached Paswan Chowk at 2 hours on 26.02.2017 and at about 4 hours the said truck was intercepted at Paswan Chowk and three persons sitting on the truck disclosed their name as Jageshwar Prasad (petitioner), Jairam Rai and Sakaldeep Bhagat. They were given notice under Section 50 of NDPS Act and they opted to be searched before a Gazetted Officer of NCB, Patna and accordingly they were taken to NCB office at Patna at 6 hours on 26.02.2017 and in presence of Superintendent Narcotic Control Bureau, Patna, said persons were searched and nothing was recovered from their possession. However, from the truck 98 nylon Sacks were recovered and when they were opened Ganja was found and entire consignment weighing 2903.80 Kgs of Ganja was seized. The statement of three apprehended persons were recorded under Section 67 of the NDPS Act and they confessed their involvement in transportation of Ganja. The sample prepared were sent to Central Forensic Lab, Kolkata which in its report dated 07.03.2017 confirmed the presence of Ganja.

It has been submitted on behalf of the petitioner



that he is innocent and have been falsely implicated in this case. It has been further submitted that the mandatory provision of NDPS Act has not been complied. Petitioners were never served any notice under Section 50 of the NDPS Act for option to be searched before a Magistrate or a Gazetted officer. Seizure were anti-dated, no such seizure was made nor sampling done as per prescribed procedure. No departmental seal has been Affixed on the search-cum-seizure list. Provisions under NDPS Act of search, seizure and sampling had not been followed which vitiates search, seizure and sampling.

Learned Counsel for the petitioner submitted that petitioner has clean antecedent and he was a mere passenger and spectator when the truck was intercepted by the NCB personnels and the actual culprits, the driver and co-driver fled away and thereafter petitioner was apprehended and implicated in this case.

After hearing the parties it is an admitted position that NCB had prior information of the truck coming with huge quantity of Ganja loaded on it and on such information a team was constituted which intercepted the truck and arrested petitioner and two others from the truck and also huge quantity of Ganja carried in nylon bags weighing 2903.80 kilogram was



recovered and seized and same was found to be Ganja. The point raised by the petitioner regarding non-compliance of mandatory provisions under NDPS Act can be a issue for consideration by Special Judge during trial but cannot be a relevant ground while considering Bail application. There is specific bar under Section 37 of NDPS Act in granting Bail to the offenders who are accused in transportation of Narcotics of Commercial quantity.

Section 37 of NDPS Act is quoted below:

“Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the public prosecutor has been given an opportunity to oppose the application for such release, and

(ii) 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.

(2) The limitations on granting of bail specified in clause (b) of sub-Section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”



Considering the fact and circumstances of the present case, this Court is not inclined to enlarge the petitioner on bail. Hence, the prayer for bail of the petitioner is hereby rejected.

(S. Kumar, J.)

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