

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39682 of 2018

Arising Out of PS. Case No.-60 Year-2018 Thana- MUFFASIL District- West Champaran

Vijay Mukhiya S/o Late Shiv Pujan Mukhiya, R/o Vill.- Amwa Majhar, P.S.-
Betiah Muffasil, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Zonal Director , Narcotics Control Bureau, Bihar, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prabhu Narayan Sharma, Adv.
For the Union of India	:	Ms. Shail Kumari (C.G.C.), Adv.
For the Opposite Party/s	:	Mr. Md. Ashlam Ansari, APP

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

3 07-09-2018 Heard learned counsel for the petitioner, learned
Standing Counsel for the Narcotics Control Bureau and learned
APP for the State.

Petitioner is languishing in judicial custody since
26.02.2018 in connection with Bettiah Muffasil P.S. Case No.
60/2018 for offences punishable under Sections 21, 22, 23 of the
Narcotics Drugs and Psychotropic Substance Act, 1985 (herein
referred to as NDPS Act).

The prosecution case, as lodged by the police
personnel, is that on information the house of the petitioner was
raided and from the roof in a jacket 6.310 kg of *charas* was
recovered, which was sent for forensic examination and the
signature of two witnesses were taken on the seizure list.



It has been submitted by the learned counsel for the petitioner that he is innocent, bears no criminal history and has been falsely implicated in the aforesaid case. He submits that nothing has been found from the possession of the petitioner and the contraband item has been implanted by somebody else who has village rivalry with the petitioner. He further submits that the independent witnesses have not been examined and, thus, non-examination of witnesses is fatal to the prosecution, as held in the case of Gorakh Nath Prasad Vs. State of Bihar since reported in (2018)2 SCC 305 and in the case of Raj Kumar @ Raj Kumar Verma Vs The State of Bihar since reported in 2018(2) PLJR 214.

However, learned counsel appearing on behalf of the Opposite Party No. 2, the Narcotics Control Bureau submits that on forensic examination it has been found to be *charas* and it was more than the minimum quantity as specified in the schedule of the NDPS Act. It is further submitted that from the roof of the house of the petitioner such seizure was made, hence opposes the prayer for bail.

Learned APP for the State also opposes the prayer for bail.

Considering the facts and circumstances and the materials



on record, I am not inclined to grant the privilege of bail to the petitioner at this stage in connection with Bettiah Muffasil P.S. Case No. 60/2018, pending in the court of learned Sessions Judge, Bettiah, West Champaran.

The application is accordingly rejected. However, the petitioner may renew his prayer for bail after framing of charge.

(Nilu Agrawal, J)

Rajesh/Pragya

U		T	
---	--	---	--

