

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21887 of 2019

Arising out of PS. Case No.-217 Year-2017 Thana- RAXAUL District- East Champaran

BRIJESH RAI @ BRAJESH RAI, aged about 23 years, Son of Suner Rai,
Resident of Village-Gayatri Nagar, P.S.-Birganj, District-Parsa, Nepal.
... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar Singh, Advocate
For the Opposite Party/s : Mr. S.D. Yadav, AAG-IX

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

6 27-11-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in F.I.R. No. 217 of 2017, dated 04.07.2017, registered at Police Station Raxaul under Sections 20, 22, 23 and 24 of the N.D.P.S. Act.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State. I have also perused the relevant record of the case, necessary for adjudication of this petition.

Learned counsel for the petitioner argues the bail application on two counts:

- (a) that petitioner is in custody since 04.07.2017;
- (b) F.I.R. is of 4rd of July, 2017 and
- (c) the petitioner has no criminal antecedents.

Well, on both counts, the petition needs to be rejected,



more so, for the reason that on 3rd of July, 2017 8.4 Kg. of contraband substance i.e. *Charas* along with foreign currency (Nepali Rupees) was recovered from the conscious possession of the accused in the presence of independent witnesses. The accused is not a citizen of this country. The punishment prescribed for the offence is Rigorous Imprisonment for a term which shall not be less than 10 years along with fine, which also shall not be less than Rs. 1,00,000/- (one lac).

From the record it cannot be inferred that it is a case of false implication. The law mandates statutory presumption of commission of crime, unless proved to the contrary.

Prima facie, it cannot be said that the mandatory provisions of the Act stood violated, infringing the Constitutional guarantee provided under Article 20. The recovery stood effected at a public place. The quantity recovered is commercial in nature.

It is settled law that grant to bail is the discretion of the court but the discretion must be exercised not in opposition to, but in accordance with the well established principles of law.

The law laid down in *Gudikanti Narasimhulu Versus Public Prosecutor*, (1978) 1 SCC 240 by Justice Krishna Iyer explains the judicial discretion as- the unspoken but



inescapable, silent command of our judicial system, and those who exercise it will remember that discretion when to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humor, it must not be arbitrary, vague and fanciful, but legal and regular.

The Apex court in case titled- Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281 and State of U.P through CBI v. Amar Manik Tripathi, (2005) 8 SCC 21 decided It is well settled that the matter to be considered in an application for bail are....

(A) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence

(B) Nature and gravity of the charge-sheet

(C) Severity of the punishment in the event of conviction.

(D) danger of the accused absconding or fleeing if released on bail

(E) Character, behaviour, means, position and standing of the accused

(F) Likelihood of the offence being repeatedly
reasonable apprehension of the witnesses being tampered with
and



(G) danger, of course, of justice being thwarted by grant of bail.

Grant of bail though being a discretionary order- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts however, do always vary from case to case. While placement of the accused in the society, though may be considered by that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances was ranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail – more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

In Prasanta Kumar Sarkav Vs Ashish Chatterjee, (2010) 14 SCC 496, the Hon'ble Supreme Court has summarized the basic principles laid down in catena of judgments on the point of granting bail. The Hon'ble Supreme Court proceeded to enumerate the following factors:



“... among other circumstances, the factors (which are) to be borne in mind while considering an application for bail are :

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger of course of justice being thwarted by grant of bail.”

In the case titled- State of Orissa v. Mahimananda Mishra JT, 2018 (9) SC 186 it was held that at the time of considering the bail application, the court must take into account certain factors such as the existence of prima facie case against



the accused, gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering of the witnesses and obstructing the court as well as the criminal antecedents of the accused. It is also well settled that the court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of the prima facie case against the accused.

In Vilas Pandurang Pawar Versus State of Maharashtra, (2012) 8 SCC 795 also it was held that while considering application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of evidence on record.

The present case has been registered under Sections 20, 22, 23 and 24 of the N.D.P.S. Act. Considering the gravity of the offence and finding that prime facie there are sufficient materials on record, I find no merits in the petition.

In view of the above discussion, I am not inclined to allow the petition by granting bail to the applicant/accused. The petition of the applicant/accused is hereby dismissed.

Any observation made herein shall not be construed to



be an expression on the merits of the matter.

The petition stands disposed of.

(Sanjay Karol, CJ)

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