

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16771 of 2019

Arising Out of PS. Case No.-690 Year-2018 Thana- PATRAKARNAGAR District- Patna

SHUBHAM KUMAR Son of Janardan Sahani @ Janardan Sahni Resident of
Village - Malahi Pakri Near Sauchalay, P.S.- Kankarbagh, Distt. - Patna.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tej Kumar Maharaj
For the Opposite Party/s : Mr. Sangeeta Sharma

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 26-03-2019 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner is languishing in custody since 23.11.2018 in a case registered for the offence punishable under Sections 20,22 and 24 of the NDPS Act (hereinafter referred to as the Act).

The prosecution case got initiated on the self statement of Sanjeet Kumar Sinha, Inspector-cum-S.H.O., Patrakar Nagar Police Station recorded on 22.11.2018 at 5.00 A.M. to the effect that after having received a secret informant that some miscreants are preparing to commit some serious nature of offence, a raid was laid, though on seeing the police party, the accused persons tried to escape from the scene, but on chase being made by the police, eight persons including the



petitioner were apprehended. On frisking from the petitioner, 15 sachets containing one gram each brown sugar were recovered.

It is submitted by learned counsel for the petitioner that only on the basis of suspicion, the petitioner has been roped in the present case. Though the case has been also registered under Section 24 of the Act also which attracts the embargo of Section 37 of the Act. But from perusal of the prosecution case it does not appear that Section 24 of the Act applies in the present case. Section 24 of the Act reads as under :-

“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 authorisation of the Central Government or otherwise than in accordance with the condition (if any) of such authorisation 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.”

Bare perusal of Section 24 of the Act it appears that offence is made out if the narcotics or psychotropic substance is obtained outside India and supplied outside India without authorization of central government, but in the instant case it is not alleged that the petitioner obtained the seized contraband outside India or supplied the same outside India. Hence, *prima facie* offence under Section 24 of the Act is not made out consequently the embargo of grant of bail under Section 37 of the Act also does not apply.

It is further submitted that the investigation has already been concluded and a statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP for the State submits that the seizure list suggest recovery of 25 sachets, however, the impugned order suggests recovery of 15 sachets from the conscious physical possession of the petitioner.

Considering the recovery of contraband between the small and commercial quantity, coupled with the fact the accusation does not suggest the commission of offence under Section 24 of the Act which attracts the embargo of Section 37



of the Act, coupled with statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, let the above named petitioner be released on bail, on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge/Special Judge, Patna in connection with Special Case No. 135 of 2018, arising out of Patrakar Nagar P.S. Case No. 690 of 2018.

(Dinesh Kumar Singh, J)

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