

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.70794 of 2019

Arising Out of PS. Case No.-380 Year-2019 Thana- KANKARBAG District- Patna

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ROHIT KUMAR @ DIVYANSHU, son of Dayanand Kumar Singh, resident
of Gharana, P.S. Telpa, O.P. District- Arwal,
Present address- In the house of Anandag, Chandmari Road, Buddha Nagar,
Road No. 01, P.S. Kankarbagh, District- Patna

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner, Central Excise, Customs
and Narcotics, Govt. of India.
2. The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Advocate

For the Opposite Party/s : Mr. S.D. Sanjay(Ad.S.G)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

3 18-12-2019 Instant petition under Sections 439 and 440 of



Criminal Procedure Code has been moved for grant of bail in Kankarbagh P.S. Case No. 380 of 2019 dated 09.04.2019, Special Case No. 50/19 under Section 20/22 of 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.

Having heard learned counsel for the petitioner, we find that no case for grant of bail is made out. From the conscious possession of the bail-applicant, contraband substance i.e. Brown Sugar was recovered. The quantity, which is small, would not make any difference in so far as the complicity of the accused in the crime, entitling him to bail is concerned, more so, in view of the statutory prescription provided in the Statute. Ex facie, it could not be said that the case of the prosecution is false. The recovery took place in the presence of the witnesses. This Court is not inclined to grant bail to the petitioner.

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.

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 Sarkar 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 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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