

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20539 of 2020

Arising Out of PS. Case No.-14 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Vaishali

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Dharmendra Roy @ Dharmendra Kumar Son of Netilal Roy Resident of
Village - Dharpur Dakhily, P.S.- Tajpur, Distt.- Samastipur (Bihar).

... .. Petitioner/s

Versus

The Union Of India Through N.C.B,Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 20-07-2020 This matter has been taken up through Video
Conferencing.

2. Let the defects be removed within two weeks after
opening of the physical court.

3. Heard learned counsel for the petitioner and learned
counsel for the Union of India.

4. The petitioner is languishing in custody for the
offences punishable under Sections 8/20/29 of the Narcotic
Drugs and Psychotropic Substances Act in connection with
Official Complaint Case No. C2A/12/2017.

5. Prosecution case is that the authorities of Narcotic
Control Bureau, Patna Zone, on a tip off, intercepted the truck



of which the petitioner was a driver. From the said truck 175 Kg (35 bags each containing 5 Kg) of Ganja was allegedly recovered.

6. The petitioner and Mr. Manoj Kumar Rai the cleaner of the vehicle were arrested at the spot. Their physical search was made after compliance of the requirement of Section 50 of the N.D.P.S. Act inasmuch as the accused persons were informed that they are entitled to be searched in presence of a gazetted officer. On the consent of the accused to be searched by the authorities, at once, their person was searched and only mobile phones were recovered. However, on their disclosure from the hidden cavity of the truck the aforesaid quantum of Ganja was recovered and the statement of the petitioner and co-accused recorded under Section 67 of the Act reveals the details of the modus operandi and commercial use of the recovered commercial quantity of Ganja. Thus, the vehicle was searched consistent with the requirement of Section 43 of the N.D.P.S. Act.

7. In the past prayer for bail was refused on 03.04.2018 in Cr. Misc. No.9976 of 2018 with direction to the trial Judge to conclude the trial expeditiously.



8. Learned counsel appearing for Union of India submits that the trial is at the verge of conclusion and the petitioner has failed to make out a case of bail in absence of fulfillment of the requirement of Section 37 of the N.D.P.S. Act.

9. Learned counsel for the petitioner submits that the petitioner is in custody since 20.07.2017. Co-accused Manoj Kumar Rai has already been allowed bail by a coordinate Bench of this Court on 22.01.2020 in Cr. Misc. No.1843 of 2020 on condition of deposit of Rs.50,000/- subject to the final outcome of the pending trial. Learned counsel submits that the petitioner is also ready to fulfill the said condition.

10. Only for the reason of grant of bail to a similarly situated co-accused by a coordinate Bench cannot attract the rule of parity in the bail matter especially when the coordinate Bench was not brought to the note of limitations under Section 37 of the N.D.P.S. Act in the matter of grant of bail.

11. Identical issue of limitation contained in Section 37(1)(b)(ii) of the N.D.P.S. Act 1985 was considered by the Hon'ble Supreme Court in Criminal Appeal Nos.154-



157 of 2020 (State of Kerala etc. V. Rajesh etc.) disposed of on 24.01.2020 whereby the Hon'ble Supreme Court cancelled the bail granted by the High Court on the ground of non-consideration of the mandate of law contained in Section 37 of the Act. The Hon'ble Supreme Court observed in paras 20 and 21 of the Judgment as follows:

“20. The Scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression “reasonable grounds” means something



more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

12. In the case on hand, there is no material to believe that the petitioner is not guilty of such offence for the purpose of consideration of the prayer for bail. The disclosure statement of the petitioner that he was deliberately involved in commercial use of the recovered narcotics it cannot be inferred that in the event of release he would not indulge in such act. Therefore, bar contained in Section 37 of the Act is apparently attracted and does not make out a case for grant of bail.

13. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Punjab and Haryana High Court in **Shiv Kumar Nagpal's case** reported in **2004 CRI. L.J. 4682**, on the judgment of Hon'ble Karnataka High Court in **Shankar Krishna Habib's case** reported in **1992 CRI. L.J. 205**, on the judgment of Hon'ble Bombay High



Court in **Lawarance D'Souza's case** reported in **1992 CRI. L.J. 399**, On the judgment of Karnataka High Court in **Kamlabai's case** reported in **1992 CRI. L.J. 561**, on the judgment of the Hon'ble Allahabad High Court in **Dadan Singh's case** reported in **1993 CRI. L.J. 1785** and on the judgment of Hon'ble Madhya Pradesh High Court in **Babulal's case** reported in **1996 CRI. L.J. 1864**.

14. Without going into the merit of those cases, it is worth to note that contrary view taken in those cases to that of the judgment of the Hon'ble Supreme Court, referred above, shall have no persuasive value.

15. In the result, prayer for bail is hereby refused.

(Birendra Kumar, J)

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