

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20544 of 2020

Arising Out of PS. Case No.-13 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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GOVIND GHOSH S/o Sukumar Ghosh R/v Agartalla (Neta Jee Subhash Pulli), P.S.- Pachhim Thana, Distt- North Tripura, State- Tripura.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 20546 of 2020

Arising Out of PS. Case No.-13 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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RANJIT MALAKAR S/o Hiran Malakar @ Hiran Das R/v- Agartalla, Neta Jee Subhash Pulli, P.O.- Chawani Agartalla, P.S.- West Thana, Distt- North Tripura, State Tripura

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 20544 of 2020)

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

For U.O.I. : Dr. K.N. Singh, Adv.

Mr. Manoj Kumar Singh, Adv.

For the State : Mr. Binod Kumar

(In CRIMINAL MISCELLANEOUS No. 20546 of 2020)

For the Petitioner/s : Mr.Vijay Kumar Sinha

For U.O.I. : Dr. K.N. Singh, Adv.

Mr. Manoj Kumar Singh, Adv.

For the State : Mr. Uma Shankar Prasad Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 19-08-2020 The court proceeding has been conducted through
virtual mode.

Since the Court proceeding in physical mode is not
functional due to the present pandemic, Covid-19, the matter



has been listed with defects.

Learned counsel for the petitioners undertakes to remove the defects within a period of three weeks on resumption of physical court proceeding.

In case of non-removal of the defects within the undertaken period, the office will place the matter before the Bench.

Heard learned counsels for the petitioners, Union of India and learned APP for the State.

Heard learned counsel the petitioner, Narcotic Control Bureau and the State.

The petitioners are languishing in custody since 18.06.2007 in a case registered for the offences punishable under Sections 8 and 20 of the N.D.P.S. Act.

The prosecution case, as per the written report submitted by the Intelligence Officer, Prakash Ram, Narcotic Control Bureau, Patna before the District and Sessions Judge-cum-Special Judge, N.D.P.S. Act, Patna is to the effect that on 16.06.2017 at about 5 P.M., the informant got a secret information that a truck, bearing registration no. NL-01-N-0393 loaded with ganja is coming from Tripura to Bhagalpur. Consequently, the said truck was intercepted at Naugachhiya



when two persons, being the driver and cleaner who were sitting in the truck and one person who was talking with the driver and cleaner of the truck were apprehended and from the alleged truck, total 633.100 Kg of ganja were recovered. The apprehended accused persons disclosed their name as Ranjit Malakar, petitioner of Cr. Misc. No. 20546 of 2020, the driver, Govind Ghosh, petitioner of Cr. Misc. No. 20544 of 2020, the cleaner and co-accused, Ashok Yadav, the person who was talking with the driver and cleaner. Consequently, the seizure was made, leading to registration of the FIR.

Learned counsel for the petitioner submits that the petitioners were the driver and cleaner of the truck in question and they were not aware about the ganja being loaded in the alleged truck. A statement has been made in paragraph no. 3 of the petition that the petitioners are not having any criminal antecedent. It is further submitted that the Narcotic Control Bureau has not verified the ownership of the truck in question and the seized ganja. Learned counsel for the petitioner further relies upon the various judgments reported in 1992 Cr.L.J. 561 (Kamalabai Vs. State of Karnataka), 1992 Cr.L.J. 399 (Lawarance D' Souza Vs. State of Maharashtra), 1993 Cr.L.J., 1785 (Dadan Singh Vs. State of U.P.), 1996 Cr.L.J., 1864



(Babulal Vs. Union of India), 2004 Cr.L.J. 4682 (Shiv Kumar Nagpal Vs. State of Haryana) and AIR 2009 SC 3214 (Sarju Vs. State of U.P.), whereby it has been held that embargo of Section 37 of the NDPS Act will not apply till the verification of the ownership of the vehicle and the seized contraband. Moreover, the investigation has already been concluded and in the present exceptional circumstances, created due to pandemic, Covid-19, since the court proceeding is not functional in physical mode, there is no likelihood of trial being concluded in near future.

Mr. Dr. K.N. Singh, learned counsel for the Narcotic Control Bureau submits that this is not in dispute that the petitioners were the driver and cleaner of the truck in question and they were transporting huge quantity of ganja and hence embargo of Section 37 of the NDPS Act will apply. Moreover, prayer for bail of the person, who was talking with the driver and cleaner, namely Ashok Yadav has been rejected twice by different Co-ordinate benches of this Court, vide order dated 21.09.2017, passed in Cr. Misc. No. 46834 of 2017 and vide order dated 14.08.2019, passed in Cr. Misc. No. 37166 of 2019.

Considering the rival submission of the parties, this is not in dispute that the petitioners were the driver and cleaner



of the truck in question from which, 633.100 Kg of ganja, which is much more than commercial quantity were recovered and consequently seizure was made. Section 37(b) of the NDPS Act mandates that no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity under the NDPS Act, shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for release of such accused, (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not prima facie guilty of such offence and that he is not likely to commit any offence while being on bail. In this case, there is nothing on record to convince this Court that the petitioners are not guilty of such offences nor there is any material to suggest that they are not likely to commit any offence while on bail.

In the circumstance, considering the commercial quantity of recovery of ganja and the embargo of Section 37(b) of the NDPS Act, which restricts grants of bail on recovery of commercial quantity, this Court is not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioners,



in connection with Special (NDPS) P.S. Case No. 87 of 2017, arising out of NCB Case No. 13 of 2017, pending in the Court of learned Additional Sessions Judge-VII-cum-Special Judge, NDPS, Patna is rejected.

However, it appears from the impugned order that the trial has already been commenced, hence, it is expected from the learned trial court to expedite the trial within a period of six months after resumption of court proceeding in physical mode.

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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