

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21366 of 2020**

Arising Out of PS. Case No.-172 Year-2019 Thana- BAUNSI District- Banka

Pintu Kumar, Son of Domi Sah, Resident of Village- Sharda Nagar, P.O. and
P.S. and Distt.- Purnea.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate
For the Opposite Party/s	:	Mr. Umeshanand Pandit, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 10-09-2020 Heard Mr. Y.V. Giri, learned Senior Counsel representing
the petitioner and Mr. Umeshanand Pandit, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Special Case No. 09/2019 arising out of Bounsi P.S. Case No. 172/2019 registered for the offences punishable under Sections 22, 8, 20(b)(ii)(c), 25, 29 of NDPS Act, 1985, pending in the court of learned Sessions Judge – cum – Special Judge (NDPS Act, Banka.

Learned Senior Counsel submits that the present case has been registered on an information received by the informant that huge quantity of ganja is being smuggled by a truck bearing registration no. BR11-L-3011 from Orrisa to Kishanganj. After recording Sanha in this respect the raiding team proceeded towards the given place and there they found one truck running towards Bounsi, when the truck was stopped the driver did not stop the truck



and started running towards Bounsi, he was followed and ultimately the truck was stopped. Thereafter the driver and his assistant disclosed their names as Md. Thihar and Md. Mir Mukhtar and on interrogation they accepted that they had loaded huge quantity of ganja in the truck thereafter the raiding team searched the truck following the procedure in front of two independent witnesses they found 70 packets of 100kg and one packet of 5kg ganja, total 71 packets of ganja containing 705kg. with one black colour Nokia mobile, driving licence and registration card of the vehicle. The apprehended driver disclosed that owner of the seized ganja is one Ranjeet Choudhary and that Ranjeet Choudhary along with Md. Taufique and owner of the truck Pintu Kumar (petitioner) are indulged in illegal business of selling and purchasing of ganja and they use to purchase Ganja from Orissa and they sell it in Purnea.

At the outset, learned Senior Counsel submits that this petitioner stands on similar footing with that of Ranjeet Choudhary who had been named by the driver as owner of the Ganja and said Ranjeet Chaudhary has already been granted bail by a learned Co-ordinate Bench of this Court vide order dated 22.10.2019 passed in Cri. Misc. No. 62328 of 2019.

Learned Senior Counsel then submitted that another co-accused Md. Toufic @ Md. Taufique @ Md. Taufik whose name has also transpired in the statement of the driver has been granted bail by a learned Co-ordinate Bench of this Court in Cri. Misc. No. 2067 of



2020. Very soon after this Court went through the two orders passed by learned Co-ordinate Bench in the case of Ranjeet Chaudhary and Md. Taufique and found that they were granted bail by learned Co-ordinate Bench by drawing a distinction and saying that they are not the owner of the truck in question, learned Senior Counsel submits that it will not make much difference because in any case the recovery of ganja has not taken place from conscious possession of this petitioner. In order to overcome Section 37 of the NDPS Act, learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India versus Shiv Shankar Kesari** reported in (2007) 7 SCC 798 and in the case of **Sujit Tiwari versus State of Gujarat** reported in 2020(2) BLJ 42(SC). It is submitted that for the purpose of bail this Court has to see the reasonable grounds to record its satisfaction and what is required is that the petitioner should make out a case some thing more than prima-facie. It is submitted that in the present case the co-accused about whom allegations were there that they are owner of the ganja and involved in procuring Ganja from Orrisa and selling them in Purnea have been granted bail and hence the principle of parity be followed by granting bail to the petitioner.

On the other hand, learned APP for the State has opposed the prayer for regular bail of the petitioner. It is submitted that had the case of the owner of the truck been standing on the same footing with that of the two co-accused who have been granted bail by



learned Co-ordinate Bench of this Court, the learned Co-ordinate Bench would not have indicated the distinction in respect of those accused with that of owner. The learned Co-ordinate Bench has specifically recorded that they are not the owner of the vehicle and hence on that count the distinction has been made out.

It is submitted that here the petitioner is the owner of the truck and there is a prima-facie material showing his involvement as owner of the truck in the commission of offence, huge quantity of ganja has been recovered from the truck owned by this petitioner and here Section 37 of the NDPS Act comes in the way of the petitioner. Under Section 37 of the NDPS Act the Court has to record its satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of the offence alleged and that while on bail, he will not commit any offence. It is submitted that on the face of materials present before this Court at this stage there is no material to record such satisfaction by this Court.

It is, then, submitted that very recently the Hon'ble Supreme Court has in the case of **State of Kerala and Others versus Rajesh and Others** reported in **AIR 2020 SC 721** while interfering with a bail granted to the accused under NDPS Act by Hon'ble Kerala High Court held that the Court should always keep in mind the embargo of Section 37 of the NDPS Act, hence the conditions mentioned therein are to be satisfied by the accused. So far as the judgments cited by learned Senior Advocate for the



petitioner is concerned, it is submitted that the principles laid down in those judgments are to be tested in the facts of the present case.

Having regard to the facts and circumstances of the case where this Court has noticed that admittedly the petitioner is owner of this truck in question from which 705kg of ganja has been recovered and seized by police and the name of the petitioner has been disclosed by the driver of the truck, being involved in procurement of Ganja from Orrisa and sale in Purnea there being prima-facie material against the petitioner and nothing before this Court to record its satisfaction in terms of Section 37 of the NDPS Act, the cases of the two accused who have been granted bail by learned Co-ordinate Bench of this Court being clearly distinguishable, in view of the conditions existing under Section 37 of the NDPS Act, this Court is not inclined to grant regular bail to the petitioner.

This application is dismissed.

Let the trial be expedited.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

