

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22756 of 2020

Arising Out of PS. Case No.-92 Year-2020 Thana- MAHUA District- Vaishali

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Vikash Kumar Singh S/o Harishankar Singh Resident of Village-
Bhagawateepur, P.S.-Sahdei, District-Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manish Chandra Gandhi, Advocate

For the Opposite Party/s : Mr. Ram Bilash Roy Raman, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 04-09-2020 The Court proceeding has been conducted
through virtual mode.

Heard learned counsel for the petitioner and
learned APP for the State.

Since the court proceeding in physical mode is
non-functional, due to present pandemic, COVID-19, the
matter is listed with defects.

Learned counsel for the petitioner undertakes
to remove the defects within three weeks of resumption of
court proceeding in physical mode. In the eventuality of
non-removal of defects within undertaken period, the office
will place the matter before the bench.

The petitioner is languishing in custody since



23.02.2020 in a case registered for the offences punishable under Sections 20, 22 and 27-A of NDPS Act, hence, the prayer for bail has been made through the present application.

The prosecution case, as per the written report of Md. Naushad Alam, S.I., Mahua Police Station submitted to the Station House Officer, Mahua Police Station, is to the effect that on 21.02.2020 during patrolling, a secret information was received that Binod Kumar Rai and Vikash Kumar Singh, the petitioner are in possession of Charas, consequently, a raid was laid. When on seeing the police, the petitioner and the co-accused tried to flee away from the place of occurrence but they were apprehended and thereafter, search was made and from the possession of the petitioner, 193 gms Charas and from the possession of co-accused Binod Kumar Rai, 198 gms Charas were recovered.

It is submitted by learned counsel for the petitioner that the petitioner has been framed in the matter. The recovery is between small quantity and commercial quantity and investigation has already been concluded. The petitioner is accused in one other case registered under Section 392 of the IPC, statement to that effect has been



made in paragraph 3 of the petition.

Learned APP for the State submits that the recovery has been made from the possession of the petitioner.

Considering the rival submissions of the parties, though the recovery is between small quantity and commercial quantity but the case has been registered under Section 27-A of the NDPS Act, then the embargo under Section 37 of the NDPS Act applies. Section 37 of NDPS Act mandates that if the case is registered under Sections 19, 24 and 27-A of the NDPS Act or there is recovery of commercial quantity of contraband then bail cannot be granted to the accused unless the Public Prosecutor is given an opportunity to oppose the application for such release, the Court is satisfied that there are reasonable grounds for believing that the accused is not not guilty of the offence or there is no likelihood of the accused to commit the offence while on bail. In the circumstances, though the case is registered under Section 27-A of NDPS Act which prescribes punishment for financing illicit traffic and harbouring but the accusation does not suggest any such kind of accusation. Hence, prima facie, the offence under



Section 27-A of NDPS Act, is not made out from the accusation levelled in the written report as such the embargo under Section 37 of NDPS Act will not apply.

In the circumstances, let the petitioner above named be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Sessions Judge, Vaishali at Hajipur in connection with Mahua P.S. Case No. 92 of 2020.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond upon furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Sessions Judge, Vaishali at Hajipur in connection with Mahua P.S. Case No. 92 of 2020.



The learned Court below is at liberty to further extend the period of provisional bail if the court proceeding in physical mode will not resume in next three months.

Accordingly, the application stands disposed of.

(Dinesh Kumar Singh, J)

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