

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69179 of 2019

Arising Out of PS. Case No.-13 Year-2018 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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RAM ISHWAR PANDIT @ MUSA @ RAMESHWAR PANDIT Son of Late
Mosaheb Pandit Resident of Village - Agiaon, P.S.- Garhani, Distt - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arbind Kumar Rai, Sub Inspector of Police, Economic Office Unit, Bihar,
Patna. Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Thakur
		Mr. Dudh Nath Singh
For the Opposite Party	:	Mr. Ram Sumiran Rai, APP
For the E.O.U.	:	Mr. Vishwanath Prasad Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
C.A.V. ORDER

8 14-12-2020 Due to COVID-19 Pandemic, the matter is being
taken up by way of Virtual Court proceeding.

The matter has been listed under the heading 'For
Orders' under the orders of Hon'ble the Chief Justice.

Heard Learned Counsel for the petitioner Mr. Ajay
Kumar Thakur, learned APP for the State and learned senior
counsel Mr. Vishwanath Prasad Singh appearing on behalf of
the Economic Offences Unit.

The petitioner seeks bail in connection with Special
Case No. 114(A) of 2018 arising out of Economic Offences P.S.
Case No. 13 of 2018 which has been instituted for the offences



under Sections 8/20(b)(ii)(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

As per the FIR, the allegation against the petitioner is that he has arranged the vehicle from which the contraband substance i.e. 55.5 kg Ganja is stated to have been recovered.

Learned counsel for the petitioner Mr. Ajay Kumar Thakur submits that the petitioner is in custody since 21.05.2019. It is also submitted by him that he has no criminal antecedent and charge-sheet in this case has already been submitted. He further submits that the petitioner is neither the owner of the vehicle from which recovery of contraband substance is made nor has he arranged the said vehicle for the alleged crime. It is next submitted by him that the name of the petitioner transpired in this case only on the basis of confessional statement of co-accused persons who were arrested on the spot. Apart from this, there is no evidence to suggest the implication of the petitioner in this case.

Learned counsel for the petitioner has cited and referred to the judgment rendered by the Hon'ble Supreme Court in the case of *Sujit Tiwari vs. State of Gujarat and Another, reported in 2020 SCC OnLine SC 84*. He has drawn the attention of this Court towards paragraphs 10 and 11 of the



said judgment, wherein, the Hon'ble Supreme Court, enlarging the appellant therein on bail, has in the following words observed that-

*“10....The main allegation made against the appellant is that he sent the list of the crew members after deleting the names of 4 Iranians and Esthekhar Alam to Vishal Kumar Yadav and Irfan Sheikh through WhatsApp with a view to make their disembarkation process easier. Even if we take the prosecution case at the highest, the appellant was aware that his brother was indulging in some illegal activity because obviously such huge amount of money could not be made otherwise. **However, at this stage it cannot be said with certainty whether he was aware that drugs were being smuggled on the ship or not,** though the allegation is that he made such a statement to the NCB under Section 67 of the NDPS Act.*

*11. At this stage, without going into the merits, we feel that the case of the appellant herein is totally different from the other accused. **Reasonable possibility is there that he may be acquitted.** He has been behind bars since his arrest on 04.08.2017 i.e. for more than 2 years and he is a young man aged about 25 years. He is a B.Tech Graduate. **Therefore, under facts and circumstances of this case we feel that this is a fit case where the appellant is entitled to bail because there is a possibility that he was unaware of the illegal activities of his brother and the other crew members.** The case of the appellant is different from that of all the other accused, whether it be the Master of the ship, the crew members or the*



persons who introduced the Master to the prospective buyers and the prospective buyers.”

(emphasis applied)

The learned counsel for the petitioner, in support of his contention, has also relied upon the decision given by Hon’ble Apex Court in ***Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2018) 8 SCC 271***, wherein the conviction of the appellant under the NDPS Act, 1985 was set aside by the Hon’ble Supreme Court and the appellant was acquitted on the ground that in absence of any substantive evidence, it would be inappropriate to base conviction of appellant purely on statements made of co-accused persons.

On the other hand, learned senior counsel Mr. Vishwanath Prasad Singh, appearing for Economic Offences Unit (O.P.No.2), has opposed the prayer of bail of this petitioner. He submits that in addition to the statements of the co-accused persons, sufficient corroborative material has been collected by the prosecution against the petitioner. He has drawn the attention of this Court towards paragraph 10 of the counter affidavit filed by Economic Offences Unit (O.P.No.2), wherein it is stated that the Call Detail Records (CDR) of the petitioner’s mobile number was obtained by the investigating



officer and after analyzing the same in detail, it was found that both before and during the alleged incident, constant conversations were made by the petitioner's mobile number with the mobile numbers of other co-accused persons, who were apprehended on the spot with the contraband substance. Thus, this piece of evidence sufficiently indicates the active involvement of the petitioner in this case. It is also contended by him that huge amount of narcotic substance i.e. 55.5 Kg of Ganja has been recovered in this case, which is above the commercial quantity. Hence, while deciding this bail application, the provision of Section 37 of the NDPS Act is required to be considered. Lastly, he submits that the judgments cited by the petitioner will not be of any benefit to him as the facts of this case is different and apart from confessional statements of co-accused, there is sufficient evidence to prove the active participation of the petitioner in this case. Therefore, the judgments cited by the petitioner are not applicable in the present case. Hence, this application be dismissed.

Learned counsel for the State has supported the arguments made by the Senior Counsel appearing for Economic Offences Unit (O.P. No.2) and has opposed the bail



application of the petitioner.

Having heard learned counsels appearing for the parties and after having gone through the material placed on record, it has emerged that the co-accused persons have in their confessional statements stated that the petitioner has arranged the vehicle in question from which recovery was made. It has also been transpired that from the CDR, it is evident that the petitioner was in constant touch at the time of the alleged crime with the co-accused persons who have been arrested with the contraband substance. The recovery of contraband substance is above the commercial quantity.

After giving anxious consideration on the precedents cited by the petitioner, in case of ***Sanjiv Kumar Khanna (Supra)*** there was no corroborative evidence in support of the confessional statements made by the co-accused persons. In fact, it is stated in para 5 of the said judgment that “*the call data reports also did not indicate that around the time when co-accused were apprehended, the appellant was in touch with either of them*”. Per contra, in this case, as per the counter affidavit filed by O.P.No.2, the CDR shows that before and at the time of the alleged crime, the petitioner was in conversation with the co-accused persons who were



apprehended at the spot. Therefore, the case of *Sanjiv Kumar Khanna (Supra)* will not be applicable in this case as the facts of this case is palpably different from the case cited by the petitioner.

In case of *Sujit Tiwary (Supra)* the Hon'ble Supreme Court has specifically observed in paragraph 11 that there is a possibility that the said appellant was unaware of the physical activities of his brother and other crew members and the case of the concerned appellant accused is different from all the other accused and, therefore, the case of the concerned appellant accused was considered by the Hon'ble Supreme Court. Whereas, in the present case, as discussed hereinabove, it cannot be said that the petitioner was not aware about the activity of the co-accused persons and in fact, the materials collected during the investigation strongly suggests that the petitioner had knowledge regarding the alleged crime being committed. Thus, the aforesaid decision would also be not applicable to the facts of the present case.

Moreover, at this stage, provisions contained in Section 37 of the NDPS Act is also required to be kept in mind.

"37. Offences to be cognizable and non-bailable. --

(1) Notwithstanding anything contained in



the Code of Criminal Procedure, 1973 (2 of 1974)--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] 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 such release and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

This court gainfully refers to the decision rendered by the Hon'ble Supreme Court in ***State of Kerala and Ors. vs. Rajesh and Ors. reported in MANU/SC/0084/2020; 2020 (1) PLJR 428***, wherein, the Hon'ble Apex Court, while



setting aside the order granting bail to the accused respondents and dealing with the provisions of Section 37 of the NDPS Act, has observed 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 Code of Criminal Procedure, 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.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the Code of Criminal Procedure, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”*

(emphasis applied)

Thus, in view of the aforesaid facts and circumstances of the present case and the observations made by the Hon’ble Supreme Court in the foregoing cases, this Court is not inclined to grant bail to the petitioner.

Accordingly, this application is dismissed.

(Sudhir Singh, J)

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