

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76085 of 2019

Arising Out of PS. Case No.-5 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

=====

KULWANT SINGH Son of Sri Sukhwinder Singh Resident of Village and
P.O-Akkanwali (Near Atta Chakki),P.S.-Bohra, Mansa, Punjab.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. UNION OF INDIA Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s :	Mr.Ashok Kumar
For the Opposite Party/s :	Mr.Mithlesh Kumar Khare
	Mr. Ratnesh Kumar

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 06-07-2020 The matter has been taken up through virtual Court proceeding.

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

Learned counsel for the petitioner, in order to remove the defect, has filed fresh cause title page on 12.12.2019 of the petition incorporating therein the case number.

The petitioner is languishing in jail since 21.1.2019 in a case registered for the offences punishable under Sections 8(c), 18(b) and 29 of the NDPS Act, 1985. Hence, prayer for bail has been made.

The prosecution case, as per the prosecution report submitted



by S.K. Singh, Intelligence Officer, NCB, Patna Zonal Unit to the learned District & Sessions Judge-cum-Special Judge, NDPS Act, Patna is to the effect that on 21.1.2019 7.5 Kg. (gross) opium was seized by the Narcotic Control Bureau from a Datsum Go plus car, having its registration No. AS-01DU – 6005 at the premises of Karpoori Thakur Sadan, Rajeev Nagar, Patna on 21.1.2019. The said contraband was concealed in the cavity between bonnet and windshield of the vehicle in question. The petitioner and co-accused Satpal Singh were found sitting in the vehicle in question. Consequently, the car in question was taken to the office of the Narcotic Control Bureau and seizure was made. Both the persons were apprehended and their confessional statement under Section 67 of NDPS Act was recorded, leading to initiation of the present case.

It is submitted by learned counsel for the petitioner that the petitioner was simply sitting in the vehicle in question as a passenger and nothing was recovered from his conscious physical possession. It is further submitted that the vehicle in question has not been found registered in the name of the petitioner. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. It is also submitted that he came to Patna to attend the Prakash Parv at Patna Sahib Gurudwara



and he simply took a lift from the driver of the vehicle in question. The petitioner was not aware about the seized contraband being concealed in the said vehicle. Moreover, the seizure cannot be treated from his personal possession and the seizure list was not prepared at the place where actual seizure was made and the confession, if any, was obtained, it was obtained under coercion.

Learned counsel for the Narcotic Control Bureau, however, submits that the seizure was made from the vehicle in question and in the confession the petitioner and co-accused admitted that they were transporting opium from North East of the country and both the apprehended accused were aware about the concealment of the seized contraband. The seizure is much more than the commercial quantity and hence, the petitioner does not deserve bail.

Considering the rival submissions of the parties, keeping in view of the fact that commercial quantity prescribed for opium is 2.5 Kgs. but the recovery is of 7.5 Kgs. from the vehicle in question in which the petitioner was found sitting and the fact that petitioner has confessed that he was not only aware about the trafficking of opium rather he was in league with the co-accused Satpal Singh in transporting the contraband, the embargo under Section 37 of the NDPS Act applies, which mandates that the bail can not be granted to such accused who are involved in commission of offences under



Sections 19 of Section 24 or Section 27A of the Act and also the offences involving commercial quantity unless the Public Prosecutor is heard and the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

There is no material on record to satisfy the conscience of this Court that the petitioner is, prima-facie, not guilty nor that he will not misuse the privilege of bail.

Accordingly, this Court is not inclined to grant bail to the petitioner in connection with Special Case No. 11 of 2019 arising out NCB/PZU/V/05/2019 pending in the Court of learned Additional District & Sessions Judge-XXII-cum-Special Judge (NDPS), Patna.

The prayer of the petitioner for bail is hereby rejected.

This application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

anil/-

U			
---	--	--	--

