

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71822 of 2019

Arising Out of PS. Case No.-559 Year-2019 Thana- ARA NAWADA District- Bhojpur

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SUNIL SINGH Son of Late Rajdeo Singh Resident of Village -
Purushottampur, P.S.- Mufassil in the district of Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar

For the Opposite Party/s : Dr. Indihar Kumari

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

8 17-06-2020 The matter has been taken up through virtual Court proceeding.

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

The petitioner is languishing in jail since 24.7.2019 in a case registered for the offences punishable under Sections 8 and 21(a) of the NDPS Act (hereinafter referred to as the Act).

The prosecution case, as per the written report of Manindra Kumar, S.I. of Police, submitted to the SHO, Ara Nawada Police Station is to the effect that on 23.7.2019 at 6.00 P.M., a confidential information was received that one person is selling



Heroin near Maharaja College. Consequently, a raiding team was constituted and raid was laid and one persons was apprehended who disclosed his name as Dinesh Prasad. On search being made, from the left pocket of his shirt, 4 gram white brown material appearing to be Herion, was recovered. Thereafter, samples of 2 gram each was made of the seized material. During enquiry, co-accused Dinesh Prasad suggested that he brought Heroin from Sunil Singh (petitioner), thereafter the room of the petitioner was raided and from his house, Acetanilide 98.5% -500 gram kept in a white and blue coloured box on which chemical name of the material was mentioned, Amonium Chloride kept in three white colour boxes, each containing 500 gram, Amonium Chloride 400 gram kept in another white coloured box and Sodium Chloride 500 gram kept in a white blue coloured box and other white material weighing 100 gram were recovered, leading to registration of the present case.

It is submitted by learned counsel for the petitioner that the seized materials are neither psychotropic substance nor narcotic drug. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. The investigation has already been concluded and there is no



likelihood of the trial being concluded in near future.

Learned APP, however, submits that one of the seized articles (Acetanilide) finds place in the table given under the Act and its small quantity is 0.005 gram but she fails to convince the Court that the chemical name of the said item does not tally with the seizurelist. Learned APP is also unable to explain as under what circumstances the samples were not sent to the Forensic Science Laboratory for its chemical examination.

The Act governs the possession, cultivation, production, manufacture, sale, purchase, transport, export, import of narcotic drugs and psychotropic substance. Narcotic drug has been defined in Section 2 (xiv) of the Act, which reads as follows:

“2 (xiv) "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;”

The prosecution case does not suggest that the seized articles were either coca leaf, cannabis (hemp), opium poppy straw or any other manufactured drugs. The informant has mentioned the name of seized articles what is mentioned on the box containing the seized article. It is not expected from a police officer who is not a chemical expert to know the chemical



properties of such seized articles which is contraband or appears to be contraband. Psychotropic substance is defined under Section 2(xxiii) of the Act, which reads as follows:

“2(xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;”

This is not the case of the petitioner that the seized material is a natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule in the Act. All these names of the seized articles mentioned in the FIR do not find figure in the list of psychotropic substance. The list of psychotropic substance is prepared in pursuance to Clause (xxiii) of Section 2 of the Act.

The table appended with the Act is notified in exercise of the powers conferred by clauses (viia) and (xxiia) of Section 2 of the Act, which prescribes the small and commercial quantity of narcotic drugs and psychotropic substance. This table has been put into six Clauses. Clauses 1 and 2 give International non-proprietary name (INN) names of narcotic drug and



psychotropic substance. Clause 3 depicts the other non-propriety names of psychotropic substance or narcotic drugs. Clause 4 deals with the chemical name of the psychotropic substance or narcotic drugs. Clause 5 deals with the small quantity of narcotic drug whereas Clause 6 deals with commercial quantity. The INN of the Serial 2 is Acetyl-alpha-methylfentanyl and its chemical name has been given as N-[1-alpha-methylphenethyl]-4-piperidyl] acetanilide. In the present case, one of the components of the Psychotropic substance, at Serial No. 02, tallies with the name of the seized material, i.e, Acetanilide, of which, small quantity is 0.005 gram and commercial quantity is 0.1 gram but mere tallying of one chemical component of the entire chemical name of such substance cannot bring the same into the category of a particular psychotropic substance or a narcotic drug, though in the present case, acetanilide recorded as 500 gram as mentioned on the label of the box with its percentage recorded as 98.5. Hence, it is very difficult to come to a conclusion that the seized materials were either psychotropic substance or narcotic drugs.

A bench of this Court, vide order dated 6.3.2020 called for a report from the learned Court below as to whether the samples of the seized material were sent for its chemical examination.



The report of the learned District and Sessions Judge, Bhojpur at Ara dated 13th March, 2020 at Flag 'R' reflects that no steps have been taken by the I.O. of the case to send the sample of the seized article to the Forensic Science Laboratory for its chemical examination. The report reads as follows:

“In pursuance to reference noted above and the Hon’ble Court’s order dated 06.3.2020 passed in Criminal Miscellaneous no.71822/2019, under reference on the subject noted above, I would like to say that up till now, I.O. of this case has not taken any step to send sample of the seized article to get the same examined from the Forensic Science Laboratory.

I, therefore request you to place the matter before the Hon’ble Court.”

From perusal of the case diary, it does not appear that the samples were transmitted to the Forensic Science Laboratory for chemical examination, hence mechanically the charge sheet has been submitted and as such, till date it has not been ascertained whether the seized article is narcotic drug or psychotropic substance.

Considering the fact that there is no likelihood of the trial being concluded in near future due to extraordinary circumstances created on account of present pandemic Covid 19, as the Courts are not functional in physical mode, more over, due to lapses on the part of the prosecuting agency, till



date, it has not been ascertained whether the seized article is narcotic drug or psychotropic substance as the sample of the seized article has not been sent for chemical examination, coupled with the period in custody, 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, Bhojpur at Ara in connection with Ara Nawada P.S. Case No. 559 of 2019.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond on 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 of the like amount each to the satisfaction of the learned Sessions Judge, Bhojpur at Ara including one surety given at the time of provisional bail.

The learned Court below will be at liberty to further extend the period of provisional bail if the Court proceeding in



physical mode is not resumed in three months.

(Dinesh Kumar Singh, J)

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