

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)**

CRIMINAL MISCELLANEOUS No.19441 of 2021

Arising Out of PS. Case No.-104 Year-2020 Thana- AMAS District- Gaya

Raj Kumar Yadav, S/O Bada Mango Yadav, R/O Village-Nadarpur, P.S-
Barachatti, District-Gaya Petitioner

Versus

The State of Bihar Opposite Party

Appearance :

For the Petitioner/s : Mr. Y.C.Verma, Sr. Advocate
Ms. Kumari Anupam, Advocate
For the Opposite Party/s : Mr.Akhileshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 24-07-2021 Learned Senior Counsel for the petitioner undertakes
to remove all the defects as pointed out by office within four
weeks after start of normal functioning of the Court.

Heard learned Senior Counsel for the petitioner and Mr.
Akhileshwar Dayal, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in
connection with N.D.P.S. Case No. 27 of 2020 arising out of Amas
P.S. Case No. 104 of 2020 registered for the offence punishable
under Section 15(C) of Narcotic Drugs and Psychotropic
Substances Act, 1985 (in short 'N.D.P.S. Act')

As per the prosecution story, the petitioner was
intercepted by the informant and from his possession narcotic
substance which is said to be husk of the cannabis plants were
recovered.

Learned Senior Counsel for the petitioner submits that



the total quantity of the recovered article is 10 Kgs. His submission is that on a bare reading of the First Information Report it would appear that the Sub-Inspector of Police searched the petitioner without giving him an opportunity to get searched in presence of a gazetted officer. In his submission there are violations of the provisions contained under Section 42 and 50 of the N.D.P.S. Act, 1985.

Learned Senior Counsel has drawn the attention of this Court towards the Hindi version of the First Information Report which mentions recovery of “Posta Trin Bhusi”. It is his submission that in fact this Posta Trin Bhusi is not mentioned in Section 2(iii) of the N.D.P.S. Act. Taking note of this fact a learned co-ordinate Bench of this Court had earlier granted bail to the accused in Cr. Misc. No. 38831 of 2016.

It is his further submission that the petitioner has remained in jail in connection with this case since 13.06.2020, he has otherwise no criminal antecedent and in any case Section 37 of the ND.P.S. Act is not attracted in the present case.

Mr. Akhileshwar Dayal, learned A.P.P. for the State submits that in fact “Posta Trin Bhusi” is the crushed version of poppy straw and this may be gathered from the fact that the First Information Report has been lodged under Section 15(c) of the N.D.P.S. Act, 1985. Learned A.P.P. submits that Section 15 falls



under Chapter IV and the heading of the Section itself talks of ‘punishment for contravention in relation to poppy straw’. Learned A.P.P., however, submits that the quantity in this case is 10 Kgs. whereas the small quantity of poppy straw as mentioned under the notification issued in terms of Section 2(vii)(a) and 2 (xxiii) (a) of N.D.P.S. Act is 1000 gms. (1 Kg.), the commercial quantity of poppy straw which is mentioned at Serial No. 110 of the said notification is 50 Kgs. Thus, the quantity in this case is less than the commercial quantity.

Having regard to the facts and circumstances of the case, the quantity in question being less than the commercial quantity, the rigours of Section 37 of the N.D.P.S. Act, 1985 is not attracted, the petitioner has remained in jail for over one year, investigation against him is complete but the trial is not likely to take place in near future, this Court directs release of the petitioner above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Gaya in connection with N.D.P.S. Case No. 27 of 2020 arising out of Amas P.S. Case No. 104 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,



(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(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'.

