

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44278 of 2021

Arising Out of PS. Case No.-204 Year-2020 Thana- JOKIHAT District- Araria

Rosidul Haque @ Rosidul Miyan, S/O Sakur Miyan R/O Village - Sukarur
Kuthi, P.S. - Sahebganj, District - Cooch Behar, West Bengal.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar- Advocate

For the Opposite Party/s : Mr. Rabindra Kumar- A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 16-12-2021 By order dated 14.12.2021, the bail petition of the petitioner was rejected holding that 108.370 kgs. of ganja was recovered i.e. the recovery was of commercial quantity.

Yesterday, before signing the order dated 14.12.2021, the F.I.R. and the seizure list were perused to confirm whether the quantity as recorded in the F.I.R. tallies with the quantity mentioned in the order dated 14.12.2021 or not. While comparing, it came to notice that allegation in the F.I.R. is of recovery of 10 (ten) packets of ganja from the car, as detailed in the seizure list, but sample was taken only from one packet i.e. P-10 and the F.I.R. is completely silent with regard to the fact that as to whether any sample was taken from rest of the nine packets or not.

Hence, the case has been listed today under the



heading to be mentioned to hear the learned counsel for the petitioner on the said issue, as such the order dated 14.12.2021, which was not signed and thus not pronounced, is hereby recalled.

Heard learned counsel for the petitioner Mr. Ravindra Kumar and learned A.P.P. for the State Mr. Rabindra Kumar.

The petitioner seeks bail in connection with Special Case No.04 of 2020 which arises out of Jokihat P. S. Case No.204 of 2020 registered under Sections 8/ 20(b)(ii)c, 22, 23, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act.

The learned counsel for the petitioner submits that petitioner is in custody since 21.06.2020, is a person with clean antecedent and charge-sheet has been submitted.

The learned counsel for the petitioner further submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the informant alleges that an information was received from his Superior Officer that ganja is going to be smuggled from West Bengal to Araria on 20.06.2020 in between 8.00 A.M. to 12.00 noon by white colour car. Accordingly, a team was constituted and proceeded to Jokihat at 7.20 A.M. and the white car bearing No. WB-64J-9444 was stopped in which



the petitioner along with two other accused were sitting. Further all the three accused persons were informed about the secret information received by the Superior Officer and after complying with the provisions of Section 50 of the N.D.P.S. Act, the accused was searched by the team in presence of witnesses, as they had consented for being searched by the team in writing.

It is alleged that on search, 10 packets of ganja was recovered from the trunk/ boot and back seat of the car and on weighing the ganja, it was found to be 108.370 kgs. It is alleged that apart from ganja, mobile were also seized and the accused disclosed that the ganja was given by one Gautam to be delivered to a purchaser near petrol pump. It is next alleged that three samples of 100 grams each was taken out from the packet marked P-10. Accordingly, the F.I.R. was instituted.

The learned counsel for the petitioner submits that from perusal of the seizure list appended with the F.I.R., it would manifest that 10 packets of ganja was recovered and the weight of ganja in each packet is also recorded. The learned counsel thus submits that when the alleged recovery was of 10 packets of ganja and each packet was weighed separately having separate quantity of alleged contraband, then why sample was



taken only from one packet i.e. P-10, why the sample from other nine packets was not taken for sending it to F.S.L.

The learned counsel for the petitioner further submits that on what basis the authority in absence of F.S.L. with regard to nine packets will be able to certify that the alleged seized material was ganja. The learned counsel further submits that as per his instruction, the charge-sheet came to be filed in the present case in absence of F.S.L. Report, thus, the learned counsel contends that on what basis the Investigating Authority filed charge-sheet certifying the alleged seized material to be ganja when F.S.L. Report was not obtained.

The learned Additional Public Prosecutor submits that in view of the submission made by the learned counsel for the petitioner instructions would be required in the matter.

Let the Superintendent of Police, Araria file a counter-affidavit personally sworn by him clearly stating that as to why sample from only one packet was taken when allegedly in the F.I.R. and the seizure list, it is recorded that there were 10 packets.

Further the Superintendent of Police, Araria will also justify that on what basis the Investigating Officer filed charge-sheet in absence of F.S.L. certifying that the entire seized



material was ganja, when admittedly, sample was not taken from the rest of the nine packets. The Superintendent of Police, Araria will also clearly record that when the alleged sample was sent to F.S.L., whether prior to filing of the charge-sheet, the F.S.L. Report was received or not, if the F.S.L. Report was not received, then on what basis the Investigating Authority and the Superintendent of Police certified the alleged seized material to be ganja, whether the Investigating Officer or the Superintendent of Police was competent to certify the alleged material to be ganja in absence of F.S.L. merely by seeing and feeling that the seized material was ganja.

At this stage, the learned counsel for the petitioner submits that the manner in which the entire investigation has been carried out, it seems that neither the Investigating Officer or the Superintendent of Police, Araria is aware of Section 36(A)4 of the N.D.P.S. Act which relates to investigation of commercial quantity of contraband. The counter-affidavit will also disclose that as to why the mandate of Section 36(A)4 of the N.D.P.S. Act was not followed during investigation.

The learned counsel further submits that liberty of an individual is a sacrosanct right and cannot be imperiled except in accordance with the procedures established by law, but in the



present case, it seems that the police in haste investigated and submitted the charge-sheet certifying the alleged seized material to be ganja in absence of F.S.L. Report, so that the liberty of the petitioner is curtailed and he remains in custody.

The Superintendent of Police, Araria is directed to ensure that the counter-affidavit must be filed by 07.01.2022, failing which the Superintendent of Police, Araria and the Investigating Officer shall be physically present in the Court.

The learned Additional Public Prosecutor Mr. Rabindra Kumar will also communicate the order to the Superintendent of Police, Araria either orally or through whatsapp.

Put up this matter on 10.01.2022.

(Satyavrat Verma, J)

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