

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39411 of 2020

Arising Out of PS. Case No.-4 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

Roshan Lal, S/o Sarju Prasad, R/o Village- Sahjani, P.S.- Manikpur, District-
Paratapgarh, Uttar Pradesh

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Union of India

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Syed Mojibur Rahman, APP
For the Union of India	:	Mr. Rajesh Kumar Verma, ASG Mr. Manoj Kumar Singh, CGC

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

9 05-04-2021 Heard Mr. Yogesh Chandra Verma, learned Senior
Counsel representing the petitioner and the learned APP for the
State as well as the learned Assistant Solicitor General for the
Union of India.

The petitioner seeks bail in connection with NDPS
P.S. Case No.6 of 2020/10 of 2020/NCB CR. No.4/2020
registered for the offence punishable under Sections 8(c), 22(b)
(c), 29 and 35 of the NDPS Act.

It is alleged by the prosecution that the Railway
Protection Force has received confidential information
regarding a man with particular description carrying a small bag
with intoxicating material. The information was verified. The
police party reached at the Howrah end of Platform No.1 when a



man of the description tallying with the information was spotted. He (petitioner) has been searched and it is alleged that white coloured power wrapped in transparent plastic and black coloured small pouches having 30 pieces of pink tablets with engraving WY was recovered.

The petitioner is said to have confessed that the white powder was Mephedrone (820 gms/commercial quantity) and the tablets kept in the black bag was also intoxicating drug Methamphetamine (5 gms). The petitioner is said to be carrying the substance by any Delhi bound train. The material has been seized and thereafter been sent for examination by the Forensic Science Laboratory, Patna (hereinafter referred to as 'the FSL, Patna').

As per the report of FSL, Patna dated 08.07.2020, the alleged Mephedrone was actually Phenothiazine. The pink tablets, which were alleged to be Methamphetamine, was found to be Promethazine.

Mr. Yogesh Chandra Verma, learned Senior Counsel representing the petitioner submits that from the report of the FSL, Patna, it is apparent that Mephedrone and Methamphetamine were not the substances recovered from the petitioner's possession. Both the substances, which have been



recovered as per the report of the FSL, Patna, are Phenothiazine and Promethazine. They are not narcotics or psychotropic substances under the NDPS Act. The learned Senior Counsel submits that based on the investigation conducted till date and especially the report of the FSL, Patna dated 08.07.2020, this is one such case where there are reasonable grounds for believing that no offence is made out under the NDPS Act.

The learned Senior Counsel submits that the petitioner has no criminal antecedents. There is also sufficient ground to believe that he is not likely to commit any offence while on bail, and to ensure his good conduct and participation at the trial, this Court may impose any reasonable terms and conditions.

Since the prayer for bail is made by submitting that the requirements of Section 37 of the NDPS Act have been satisfied, this Court had earlier allowed the State as well as the Union of India an opportunity to oppose the bail.

The Union of India has filed an affidavit. The fact that as per the opinion of the FSL, Patna, the recovered substances are not substances within the NDPS Act, or Schedule of the same, has not been denied or disputed. The Union of India has taken a stand that they have filed a petition in the trial court for permission to allow re-testing of the sample by the Central



Forensic Science Laboratory at Kolkata.

The petitioner's prayer for bail relying upon the stipulations contained in Section 37 of the NDPS Act cannot be kept pending for future uncertainties based on petition for re-testing filed by the Union of India.

As per the report of the FSL, Patna dated 08.07.2020, the substance recovered from the petitioner was not a narcotic or psychotropic substance contained in Schedule of the NDPS Act. Due opportunity has been given to the learned counsel for the Union of India as well as the State Counsel to oppose the prayer for bail. Also the petitioner is a man of clean antecedents. In the opinion of this Court, petitioner has been able to make out a case for grant of bail on the requisite parameters contained in Section 37 of the NDPS Act. This Court is thus inclined to allow the prayer for bail of the petitioner.

It is submitted on behalf of the petitioner that his father/brother would be one of the sureties.

Learned Assistant Solicitor General submits that in the event, the substance is re-tested and report comes regarding the recovered substance being a narcotic or psychotropic substance under the NDPS Act, liberty may be granted for cancellation of bail.



This Court would only observe that if such a situation arises, the authorities would be free to take steps in accordance with law.

Accordingly, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.50,000/- (Fifty thousand) with two sureties of the like amount each to the satisfaction of learned Additional District & Sessions Judge-V, Gaya, in connection with NDPS P.S. Case No.6 of 2020/10 of 2020/NCB CR. No.4/2020, subject to the following conditions:

- (i) That one of the bailors will be father or brother of the petitioner. The bailor will also undertake to inform the court if there is any change in the address of the petitioner.
- (ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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