

30.09.2021
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Ct. No 29
KAUSHIK
(REJECTED)

C.R.M. 6536 of 2021
(via video conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Dhubulia** Police Station Case No. **183** of **2021** dated **09.06.2021** under Sections 21(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In Re : Bama Sk @ Kamal Sk petitioner

Mr. Arindam Jana
Mr. Sumanta Das

... for the petitioner

Mr. Madhusudan Sur
Mr. Dipankar Pramanik

... for the State

Petitioner seeks bail.

Learned advocate appearing for the petitioner submits that, initially three persons were arrested with commercial quantity of 'ganja'. Apparently, on their statement, the petitioner was also arrested. However, 5 kgs of 'ganja' was recovered from the possession of the petitioner. 5 kgs. of 'ganja' does not constitute commercial quantity. He relies upon **(2018) 11 SCC 488 (Birbal Prasad Alias Birbal Prasad Sah Alias Birbal Prasad Sao Alias Birbal Sah Vs. State of Bihar)** in support of the contention that when commercial of 'ganja' is not seized, bail can be granted.

Learned advocate appearing for the State submits that, the police recovered commercial quantity of 'ganja' from the joint possession of the petitioner along with other co-accused. At this stage of the investigation, it cannot be said with certainty that

the recovery made on the first occasion and on the second occasion do not tantamount to joint possession of commercial quantity of contraband.

In ***Birbal (supra)***, the Court found commercial quantity of narcotic was not seized from the possession of the accused and, therefore, did not interfere with the order of grant of bail. The facts and circumstances of the present case are different. Recoveries of contraband were made on two occasions. Same material was recovered on both the occasion albeit of different quantities. At this stage, it cannot be said with certainty that commercial quantity of 'ganja' was not recovered from the joint possession of the petitioner. The petitioner is unable to rebut the presumption under Section 37 of the NDPS Act, 1985.

In such circumstances, we are unable to grant bail to the petitioner.

Accordingly, prayer for bail is rejected and the application being CRM 6536 of 2021 is disposed of.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)