

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 5476 of 2022

Arising Out of PS. Case No.-358 Year-2019 Thana- MALSALAMI District- Patna

CHANDAN KUMAR@ CHANDAN RAY Son of Sant Lal Ray Resident of
Village - Bundeltoli, Nawab Ganj, P.s.- Malsalami, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Nityanand Kumar, Advocate

For the Opposite Party/s : Mr Md Nazir Ansari, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL ORDER

5 **23-03-2022** Heard learned counsel for the petitioner and learned
Additional Public Prosecutor (for brevity, *APP*) appearing for
the State of Bihar.

The petitioner seeks bail in Malsalami Police Station
(for brevity, *PS*) Case No 358 of 2019 (Special Case No 117 of
2019) instituted for the offence punishable under Sections 20,
21, 22 of Narcotic Drugs and Psychotropic Substances (for
brevity, *NDPS*) Act.

21 Kilograms of Ganja (1 Kilogram excess of
commercial quantity) has been recovered from an auto rickshaw.
Petitioner is the driver. Two others, namely, Rakesh Kumar and
Kanchan Kumar were also seated in the auto rickshaw. All three
have been arrested.

Petitioner's counsel, at the very outset, submits that
Kanchan Kumar and Rakesh Kumar have been allowed bail by



this Court in Cr Misc No 11541 of 2020 and Cr Misc No 18522 of 2020 respectively. Petitioner's prayer for bail had earlier been rejected by this Court on 13.10.2020 by order passed in Cr Misc No 26332 of 2020. Thereafter, he had renewed his prayer for bail in Cr Misc No 41782 of 2021 which was disposed of on 08.12.2021 with liberty to the petitioner to renew his prayer for bail before the Court of Additional Sessions Judge VII, Patna.

Petitioner's counsel submits that, as of now, the petitioner has remained in custody since 20.09.2019, i e more than two years.

The learned APP has opposed the prayer for bail. He has submitted that in view of the bar contained in Section 37 of NDPS Act, the recovery, being commercial quantity, this Court should not entertain the petitioner's bail application.

The petitioner's counsel, on the other hand, has rightly submitted that even as per prosecution case, the petitioner was driver of the vehicle in question. The vehicle was registered in his father's name. The bag, containing the contraband, has been recovered from the foot board of the back row of the vehicle where the two co-accused were sitting, as per seizure list. It is further submitted that the petitioner, being driver, was not in a position to object carrying of the bag by the



two passengers (co-accused persons). Both the co-accused persons, from whose part of the vehicle the contraband was recovered, has been allowed bail by this Court. The petitioner has no criminal antecedent.

The facts and circumstances, as per prosecution case leading to recovery of the commercial quantity and the submissions advanced by the petitioner's counsel, taken note of above, in the opinion of this Court, make out a circumstance for lifting the bar prescribed under Section 37 of the NDPS Act. The learned APP has also been given opportunity to oppose the prayer for bail. This Court is of the opinion that, based on the discussion above, reasonable grounds have been made out for believing, for the limited purpose of grant of bail that the petitioner may not be guilty of the offence. Since the petitioner has no criminal antecedent, there is no basis to infer that he is likely to commit any offence, while on bail. This Court is of the opinion that in view of the provisions contained in Section 37 (1) (b) of the NDPS Act, the grounds are made out for the purposes of grant of bail to the petitioner.

Having regard to the aforesaid consideration, facts and circumstances, this Court, for the purposes of grant of bail, is, thus, inclined to accept the submissions advanced by the



petitioner's counsel. Prayer for bail is allowed. Let the petitioner, above named, be released on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge XXIV, Patna in Malsalami PS Case No 358 of 2019 (Special Case No 117 of 2019) subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with 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.

Learned counsel for the petitioner is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

M.E.H./-

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