

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.5932 of 2022**

Arising Out of PS. Case No.-77 Year-2021 Thana- NOKHA District- Rohtas

RAKESH PANDEY @ RAKESH KUMAR PANDEY SON OF  
HARIVANSH PANDEY R/O VILLAGE- GAMHARIYA, P.S.- NOKHA,  
DISTRICT- ROHTAS

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Krishna Prasad Singh, Senior Advocate  
Mr. Saket Kumar Singh, Advocate  
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL ORDER**

4      20-12-2022                      Heard learned counsel appearing on behalf of the  
petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period  
of four weeks from today.

The petitioner seeks bail in connection with Nokha  
P.S. Case No. 77 of 2021 registered for the offence under  
Sections 8(c), 20(b)(ii)(c) of the NDPS Act, 1985.

The accused/petitioner is named in the F.I.R. and is in  
custody since 30.09.2021.

The allegation against the petitioner is to have in  
possession of 177 kg of contraband/narcotics i.e. 'Ganja', as  
same was alleged to be found in the Farmyard (*Khalihan*) of the  
petitioner.



Learned senior counsel appearing on behalf of the petitioner submitted that admittedly, as per face of FIR the alleged recovery of contraband/narcotics i.e. '*Ganja*' was made from open place i.e. farmyard (*Khalihan*) of this petitioner, which is accessible by other family members and general public and as such, it cannot be said that the alleged contraband/narcotics i.e. '*Ganja*' was recovered from physical possession of this petitioner. Learned senior counsel while travelling over the argument pointed out paragraph no.9, 10 and 11 of the case diary, where, no specific name of witnesses appears to suggest that the farmyard (*Khalihan*) belongs to this petitioner. It is further submitted that no documentary report was collected from revenue office during the course of investigation, which may suggest that alleged open place i.e. farmyard (*Khalihan*) belongs to this petitioner, in furtherance of suspicion, as raised by the police spy and unknown villagers. It is also pointed out that as the recovery is admittedly not made from conscious physical possession of this petitioner, therefore, the restrictions as available through Section 37 of the NDPS Act is not appears to be applicable in the present case. While concluding the argument, it is submitted that petitioner is man of clean antecedent and moreover, investigation of this case



has been completed, for which, charge-sheet has already been submitted, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State, opposes the prayer of bail.

Considering the facts and circumstances as mentioned above, as admittedly recovery of alleged contraband/narcotics i.e. 'Ganja' was made from open place, where, nothing appears, during course of investigation, which may suggest that same farmyard (*Khalihan*) belongs to this petitioner coupled with the fact that charge-sheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Nokha P.S. Case No. 77 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Session Judge, Rohtas at Sasaram/concerned court, subject to the following conditions:

*“(i) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by*



*the documents.*

*(ii) That one of the bailors of the petitioner shall be deponent of the present bail petition.”*

**(Chandra Shekhar Jha, J)**

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