

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5870 of 2022

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

MITHLESH PASWAN SON OF LATE MAHESH PASWAN R/O -
HARNATH KUNDI, P.S.- UDBANT NAGAR, DISTRICT- BHOJPUR

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Diwakar Sinha, Advocate.

For the Opposite Party/s : Mr. Shailendra Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 17-10-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard learned counsels for the petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with NDPS Case no. 12 of 2021, arising out of Sherghati P.S. Case No. 75 of 2021, registered for the offences punishable under Sections 8/20(b)(ii)(c)25/29/59(2) of Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as ‘the NDPS Act’)..

The prosecution case is based on a written report of the police Inspector, namely, Lallan Kumar, who stated that on a secret information that a huge quantity of ganja is being carried



from a vehicle escorted by Honda City vehicle, constituted a team and intercepted the vehicle and apprehended four persons. On interrogation, they disclosed their names and their statements have been recorded under Section 67 of the N.D.P.S. Act. They disclosed that their consignment of Ganja was coming from Orissa to Ara (Bihar) from a Pick-up van, bearing registration no. JH 01Z 0342, however, the same was intercepted by the officials of Excise. It is further alleged that the officials of Excise made a demand of Rs.5,00,000/- to release the Pick-up Van, in question, and, as such, they were going to Dobhi for getting the vehicle released. It is specifically alleged that the officers of Excise Department and Excise Sub-Inspector Mukesh Kumar in collusion with the other staff demanded bribe of Rs.5,00,000/- to release the said vehicle along with the Ganja carrying on the said vehicle. On the aforesaid information, the informant along with other officers of Economic Offences Unit raided the place where the Pick-up van was kept confined and apprehended the constables/officials of Excise Department, who were allegedly responsible for making bribe for release of the vehicle along with the contraband. The team of Economic Offences Unit also apprehended the driver and Khalasi (petitioner) of the said Pick-up van and on search



total 253 Kg of Ganja was recovered from a secret cavity of the pick up van.

Learned counsels appearing on behalf of the petitioner submits that the petitioner happens to be Khalasi of pick up van, in question, which runs for transportation of goods on the order of the owner or transporter. Further he has neither any concern with the pick up van nor with the alleged recovered Ganja. It is also contended that the petitioner was not the regular Khalasi of the vehicle as he being resident of Udwant Nagar joined the vehicle on the same day, when the vehicle started from Udwant Nagar. It is next submitted that in the entire investigation, the prosecution has failed to disclose any material showing the complicity of the petitioner with the consigner of the Ganja. Further, there is no Call Detail Records showing the petitioner was, in any way, connected with any persons involved in trafficking of Ganja or any contraband substance. It is further submitted that on being apprehended, the police personnel seized the mobile phones of all the petitioner and called the driver of Pick-up van from the mobile of one of the accused, namely, Munna Singh, in order to create the material against them, though the petitioner has neither talked to the any other accused persons nor with the Excise officials for releasing of the



Pick-up Van along with the alleged consignment of Ganja. While concluding his submission, it is submitted at bar that petitioner has no criminal antecedent and on the alleged date of occurrence petitioner was only requested to accompany the driver and he without knowing any facts joined the vehicle at Udawant Nagar, but unfortunately on suspicion he was apprehended and a false case has been made out without there being any cogent material. Counsels for the petitioner lastly submit that now the investigation of the crime is already complete and moreover all the witnesses are police officials and, as such, there is no chance of tampering with the evidences or intimidating the witnesses and he is ready to give undertaking that he will fully cooperate in the trial and he is ready to abide by all the terms, as would be imposed by this Court.

In course of submissions made on behalf of the learned counsels appearing on behalf of the petitioner, reliance have been made on a judgment rendered by the Hon'ble Supreme Court in the case of **State of West Bengal Vs. Rakesh Singh**, reported in **Manu/SC/0854/2022** and submit that once the veracity of prosecution case against the accused persons is in serious doubt, further analysis on the other factors about financing the drug, trafficking and harbouring the offenders



need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which accused persons are sought to be connected with such alleged planting could be regarded to be false and fanciful at least at this stage. It is also submitted that no recovery has been made and as such the rigors, as provided under Section 37 of the NDPS Act would not be applicable, unless the prosecution would be able to prove that the accused persons have any way connected with the seized contraband. He emphatically submitted that Section 37 of the NDPS Act would not bar the release of the accused person on bail, it only mandates that before release the Public Prosecutor must be given an opportunity to oppose the application for such release and where the Public prosecutor opposes the application, the Courts are to be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

On the other hand, learned Central Government Counsel appearing on behalf of Union of India as well as learned APP for the State vehemently opposed the bail application and submitted that from the materials available on record, it is crystal clear that on a tip of secret information that



all the accused persons were coming from Orissa to Ara (Bhojpur) by escorting Pick-up van, in question, wherein a huge commercial quantity of Ganja, weighing 253 Kg was kept concealed in a cavity especially manufactured in the Pick-up Van and one of the accused sitting in the Honda Car, namely, Munna Singh, was in regular touch with the driver of the said Pick-up van. It is further submitted that the recovery of Ganja and seizure of the Pick-up Van clearly demonstrate the involvement of the petitioner, who was apprehended at the spot with huge quantity of Ganja. It has come that the petitioner having been Khalasi of the pick up van, was coming from Orissa after getting the Ganja loaded. It is also submitted that from the statements of the driver and khalasi (petitioner) of the Pick-up van, recorded under Section 67 of the NDPS Act, it would show that a deal to illegally get release of the Pick-up van was made by co-accused persons, and they were on way to finalize the deal for getting the release of Pick-up Van. He lastly submit that non-availability of entire cash of Rs.5,00,000/- from the persons of the Honda City car cannot be ruled out other objects, evidences, establishing the illegal deal between the Ganja smugglers and the accused-officials of the Excise Department.



Before parting with the final outcome, it is needless to say that what amount to “conscious possession” was also considered in the case of **Dharampal Singh Vs. State of Punjab**, reported in **(2010) 9 SCC 608** wherein it was held that knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several **persons as opposed** to a private vehicle with a few persons known to one another. In the case of **Madan Lal Vs. State of Himachal Pradesh**, reported in **(2003) 7 SCC 465**, the Hon’ble Supreme Court observed that the term “possession” could mean physical possession, animus custody over the prohibited substance with animus exercise of dominion and control as a result of concealment, or personal knowledge as to the existence of the contraband and the intention based on such knowledge.

It is well settled that finding of the absence or possession of contraband on the person of the accused person does not absolve it at the level of scrutiny required under Sections 37(1)(b)(c) of the N.D.P.S. Act.

Regard being had to the submissions made on behalf of the parties and considering the materials available on record,



it is evident that huge quantity of Ganja was recovered from the pick up van of which the petitioner, was Khalasi and the said Pick-up van was escorted by the co-accused persons right from Orissa to Ara and moreover the driver and Khalasi (petitioner) having categorically identified the co-accused persons, who were get the Ganja loaded in Orissa in the Pick-up Van, apart from the fact that petitioner Munna Singh in Cr. Misc No. 67419 of 2021, who was sitting along with other co-accused person in Honda City car, was in constant touch with the driver and Khalasi (petitioner) of the Pick-up van regularly and also the fact that the trial is in progress and the observations of the Hon'ble Supreme Court showing narrow parameters of bail available under Section 37 of the NDPS Act, this Court comes to the conclusion that there are no reasonable ground to believe that the petitioner is not indulged in the trafficking of huge quantity of Ganja, this Court is not persuaded to enlarge the petitioner on bail.

Accordingly, the prayer for bail of the petitioner stands rejected.

(Harish Kumar, J)

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