

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9141 of 2022

Arising Out of PS. Case No.-78 Year-2021 Thana- MAHINDWARA District- Sitamarhi

RAJU KUMAR @ RAJA Son of Vaidhnath Mahto Resident of Village -
Kaura Bhim, P.s.- Parsauni, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Virendra Kumar, Adv.

For the Opposite Party/s : Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 26-07-2022 Heard learned counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner seeks bail in a case registered for
the offence under Sections 8, 20(b)(ii)(C) of the N.D.P.S. Act
and Section 25(1-b)a and 26 of the Arms Act.

Recovery is of 1.280 Kgs. of Charas along with a
loaded pistol.

Learned counsel for the petitioner submits that the
petitioner is innocent and he has falsely been implicated in
this case. He further submits that, in fact, according to the
F.I.R., 1.280 Kgs. of Charas is said to have been recovered
from the bag of the petitioner. He further submits that
nothing incriminating has been recovered from the



conscious possession of the petitioner and he has no concern with the alleged recovery of 1.280 Kgs. of Charas. He also submits that the petitioner is not involved in illegal dealing of Charas. He further submits that the petitioner is rotting in judicial custody since 29.05.2021.

Learned A.P.P. for the State has, vehemently, opposed the prayer for bail of this petitioner and submits that recovery in this case is to the extent of 1.280 Kgs. of Charas from the bag of the petitioner falling within the purview of commercial quantity. He also submits that since the recovered quantity comes under the purview of commercial quantity, the petitioner seems to be engaged in dealing with the contraband substance like Charas, which has been confirmed by the F.S.L. report. Hence, the petitioner does not deserve to be enlarged on bail.

Result of examination of Forensic Science Laboratory is as under;

“The blackish brown coloured slab like solid substances contained in plastic container described as above was found to be ‘CHARAS’ containing Tetrahydrocannabinol (THC) as their chief intoxicating ingredient.

Charas is also known as “HASHISH” which is the resinous exudate of the flowering and fruiting tops of the female plant of Cannabis Sativa.”



Since the quantum of recovery of Charas in this case falls within the purview of commercial quantity, which is defined as 1 Kg., this Court intends to refer Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which clearly depicts that the grant of bail in N.D.P.S. cases, where the recovery of commercial quantity of narcotic is alleged, is circumscribed. Section 37 says that for granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences for which he has been charged, and further he is not likely to commit any offence while on bail.

This issue has also been considered by the Hon'ble Supreme Court in the case of ***State of Kerala and Ors. Vs. Rajesh & Ors.*** reported in **2020 (12) SCC 122**.

In view of the aforesaid reference and the facts of the case, this court is of the view that the recovery of more than commercial quantity of Charas from the bag of the petitioner, confirming the same by the F.S.L. report, would not justify that the petitioner had no knowledge of Charas kept in his bag or he was not involved in commission of such offence and also there is no material available to



substantiate that the petitioner would not commit such offence in the event of release. Therefore, considering the quantum of recovery of Charas as well as the mandate of Section 37, this Court is not inclined to enlarge the petitioner on bail at this stage. Accordingly, the prayer for grant of bail to the petitioner is rejected.

However, learned trial court is directed to expedite the trial.

(Rajesh Kumar Verma, J)

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