

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12081 of 2022

Arising Out of PS. Case No.-10 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Surendra Kumar Ray @ Surendra Kumar, Son of Mr. Lakhan Deb Ray @
Lakhan Dev Ray, Resident of Village and P.O.- Chandpura, P.S.- Raghapur,
District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vindhyachal Singh, Sr. Advocate
		Mr. Abhimanyu Deo, Advocate
For the Opposite Party/s :		Mrs. Sangeeta Sharma, APP
For Union of India	:	Mr. Ratnesh Kumar, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 10-10-2022 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.

2. Heard Mr. Bindhyachal Singh, learned senior
counsel for the petitioner and Mr. Ratnesh Kumar, learned CGC
on behalf of Union of India as well as learned counsel for the
State.

3. The petitioner seeks bail, who is in custody in
connection with Special (NDPS) Case No. 141 of 2020, arising
out of Crime No. NCB/PZU/V/10/2020 registered for the
offences under Sections 8(c) read with Sections 20(b)(ii)(c), 25
and 29 of the NDPS Act.



4. The prosecution case is based on a written report filed by Intelligence Officer, Narcotic Control Bureau (hereinafter referred to as 'NCB') alleging therein that on 16.09.2020 on a secret information that a truck bearing registration no. UP 53CT 0913 loaded with huge quantity of Ganja coming from Sambalpur Orissa to Zero Mile, Patna, was intercepted by a team of NCB and two persons, said to be the driver and co-driver, were apprehended at the spot. On enquiry, the persons, who were occupying the said truck admitted that around 607 Kg of Ganja is being carried in the said truck and the driver Vicky Sharma disclosed the name of co-accused Raj Ghosh, as supplier of the Ganja and also disclosed about his staying at Mamta Hotel, Bakhtiyarpur. On the said information, the team of NCB raided Mamta Hotel and apprehended co-accused Raj Ghosh and Sheikh Sammiullah. The apprehended Raj Ghosh disclosed the name of Basishtha Kumar and one Surendra Kumar Ray @ Surendra Kumar (petitioner), as the consignee of the seized Ganja. It is also alleged that all the apprehended persons were taken to Transport Nagar police station where in their presence, search was made and 607 Kg of Ganja in 24 plastic sacks were recovered.

5. Learned senior counsel for the petitioner submits



that the petitioner was neither apprehended at the spot nor any incriminating material has been recovered from his person or possession and save and except the statement recorded under Section 67 of the NDPS Act, which has no evidentiary value in the eyes of law, there is no material against him. He further submits that the mobile, which is said to have been used by the petitioner does not belong to this petitioner and there is no material on record suggesting that any money has been transferred by the petitioner to any accused persons. He further submits that even the driver or co-driver of the truck, in question, has not disclosed the name of the petitioner as consignee of any incriminating materials.

6. Learned senior counsel also submits that there are so many contradictions in the confessional statement of the accused persons and the version of the prosecution, as stated in the seizure list, apart from the fact that staffs of the hotel, have not been made witnesses nor their statements were recorded in course of investigation. He next submits that there are various other discrepancies in the manner of interception, search, seizure and sampling and they have not been carried out in compliance with the Standing Order No. 1 of 1988 dated 01.09.1989. He lastly submits that all the witnesses, except



search witnesses, are official witnesses and there is no chance for the petitioner to influence the prosecution witnesses and moreover the investigation of the crime is complete, though the petitioner, having fair antecedent, is in custody since 16.07.2021 and there is no likelihood of trial being concluded in near future.

7. He also submits that the statement recorded under Section 67 of the NDPS Act cannot be used as a confession in the eyes of law and in support of his submission he relied upon one of the judgment of the Hon'ble Supreme Court rendered in the case of **Tofan Singh Vs. State of State of Tamil Nadu**, reported in **(2021) 4 SCC 1**.

8. On the other hand, learned CGC appearing on behalf of Union of India opposes the bail application and submits that apart from the statement recorded under Section 67 of the NDPS Act admitting the active involvement of the petitioner in trafficking the huge quantity of Ganja, the petitioner's active involvement in the crime is well established from the CDR (Call Detail Report) and CAF of the mobiles of the petitioner and other accused persons, which shows that the main supplier (Raj Ghosh) and co-accused Bashishtha Kumar (associate of the petitioner) had talked to each other on several time in between 01.09.2020 to 09.09.2020. It has also come that



an amount of Rs.50,000/- was also deposited by Bashishta Kumar on the dictate of the petitioner in the Bank account of the supplier of the seized Ganja. It has also come that it is the petitioner, who had directed for arrangement of accommodation of the co-accused Raj Ghosh and Sheikh Sammiullah at Mamta Hotel, Bakhtiyarpur and he is the main consignee and receiver of the huge quantity of the Ganja.

9. Learned CGC also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **State of Kerala Etc. Vs. Rajesh Etc.** (Criminal Appeal No(s). 154-157 of 2020, arising out of SLP (Crl.) No(s) 7309-7312 of 2019). Further reliance has also been made on a judgment rendered in the case of **Narcotic Control Bureau Vs. Mohit Agrawal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of Petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021).

10. It would be apt and proper to reiterate the observations and the mandate given by the Hon'ble Supreme Court in the aforesaid cases that to check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory



conditions in Section 37, namely; (I) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offences while on bail are satisfied.

11. The Scheme of 37 of the NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C. , but is also subject to the limitation placed by Section 37 of the NDPS Act, which commences with non-obstante clause.

12. The expression reasonable grounds means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

13. So far the admissibility with regard to the statement recorded under Section 67 of the NDPS Act is concerned, the Hon'ble Supreme Court in the case of **Mohit Agrawal** (Supra) while considering the aforesaid three judges Bench judgment of Tofan Singh Vs. State of Tamil Nadu has clearly observed that confessional statement recorded under



Section 67 of the NDPS Act could not have relied by the NCB, as the same is held to be inadmissible in the trial of an offence under the NDPS Act.

14. Having regard to the submissions made on behalf of the parties and considering the materials available on record, it is evident that apart from the statements of the petitioner recorded under Section 67 of the NDPS Act, there are other materials, which had led the NCB team to arrive at and search and seized the truck, in question, which resulted into recovery of huge quantity of contraband substance like Ganja and further material also discloses that the petitioner and the co-accused persons were actively in touch with each other and certain money transaction have taken place at the instance of the petitioner, which also shows the complicity of the petitioner, apart from his complicity disclosed by co-accused Raj Ghosh, who is said to be the supplier of Ganja 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 not persuaded to enlarge the petitioner on bail.



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

(Harish Kumar, J)

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