

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13457 of 2022

Arising Out of PS. Case No.-17 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Nagendra Rai, Son of Jayram Rai, Resident of Village- Jafrabad, P.S. -
Raghopur, District- Vaishali.

... .. Petitioner/s

Versus

The Union of India through NCB, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate
		Mr. Ashok Kumar Mishra, Advocate
For the Opposite Party/s :		Mrs. Punam Kumari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 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.

2. Heard Mr. P. N. Shahi, learned senior counsel for
the petitioner and Mrs. Punam Kumari Singh, learned CGC on
behalf of NCB.

3. The petitioner seeks bail, who is in custody in
connection with NDPS Case No. 22 of 2021, arising out of NCB
Crime Case No. 17 of 2021, registered for the offences under
Sections 8(c) /20(b)(ii)(c), 25 and 29 of the Narcotic Drugs and
Psychotropic Substances Act (hereinafter referred to as 'the
NDPS Act').

4. The prosecution case is based on a written report of



the Intelligence Officer, Narcotic Control Bureau, Patna alleging therein that on receipt of a confidential information that a truck bearing registration no. AS01GC 1146, coming from Agartalla to Bidupur, Hajipur carrying huge quantity of Ganja, was intercepted at Toll Plaza and on search, in presence of independent witnesses, total 200.500 Kg Ganja was recovered from a cavity of the Truck. The driver and Khalasi, namely, Dinesh Rai and Rishu Kumar, were apprehended at the spot along with the truck.

5. Learned senior counsel appearing on behalf of the petitioner vehemently submits that the petitioner is not named in the complaint petition filed by the Intelligence Officer nor any contraband (Ganja) was recovered either from the house or from the possession of the petitioner. It is submitted that from the seizure list, it is evident that 200.500 Kg Ganja was recovered from the hidden cavity of Tata Truck, in question, which was driven by the driver Dinesh Rai and Khalasi Rishu Kumar and petitioner has neither any concern with the truck nor with the recovered Ganja. After taking reliance of the judgment rendered in the case of **Tofan Singh Vs. State of Tamil Nadu**, since reported in **(2021) 4 SCC 1**, he submits that the confessional statement recorded under Section 67 of the N.D.P.S. Act is not



admissible and in the present case, save and except the confessional statement of the driver and Khalasi recorded under Section 67 of the NDPS Act, there is no material suggesting the complicity of the petitioner in the present crime. The reason for disclosure of the name of the petitioner by the driver and khalasi of the truck, in question, has been explained in para 14 of the bail application. Mr. Shahi, learned senior counsel next submits that now the investigation of the crime is already complete and the charge-sheet has been submitted, way back on 22.01.2022 and the petitioner, having no criminal antecedent, is in custody since 26.08.2021 and further no custodial enquiry is required in this case. He further submits that all the witnesses are police officials and there is no chance of tampering with the evidence or intimidating the witnesses and moreover the petitioner is giving undertaking that he would be abide by all the terms and conditions, as would be imposed by this Court.

6. On the other hand, Mrs. Punam Kumari Singh, learned CGC appearing on behalf of NCB vehemently opposes the bail application and submits that both the apprehended persons confessed their conscious involvement in trafficking of seized 200.500 Kg of commercial quantity of Ganja and have disclosed that they were the carrier of the seized Ganja. They



categorically disclosed that co-accused Arjun Deb is the supplier of seized Ganja and the petitioner (Nagendra Ray), Mukesh Kumar Yadav, Suresh Ray and Harivansh Rai are the receiver of the said seized Ganja. She next submits that the chemical analysis report clearly suggest that the sample under reference answers positive tests for Ganja. She emphatically harped upon the Call Detail Records and submitted that the accused persons, including the petitioner, were connected with one another through mobile calls, details of which have been brought on record by filing a counter affidavit, duly sworn by the Junior Intelligence Officer, NCB. She further submits that the statement of the petitioner was also recorded under Section 67 of the NDPS Act admitting this fact that he was one of the receiver and is constantly in touch with all the accused persons. She further submits that during the course of investigation, the statement of co-accused Niraj Kumar was also recorded and he disclosed the fact that he used to send money in the account of Arjun Deb (supplier) at the behest of his father, namely, Suresh Ray and his maternal uncle, Nagendra Ray (petitioner).

7. 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).

8. It would be apt and proper to reiterate the observations and the mandate given by the Hon'ble Supreme Court in various 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.

9. The Scheme of Section 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.

10. 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.

11. 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.

12. 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.



13. 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.

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, other materials, which had also 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 on their mobile phones and certain money transaction have taken place, which also shows the complicity of the petitioner 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.



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

(Harish Kumar, J)

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