

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18696 of 2022

Arising Out of PS. Case No.-206 Year-2021 Thana- BOCHAHAN District- Muzaffarpur

RANJAY KUMAR S/o Kailash Ray Resident of Village- Bagahi, P.S.- Kanti,
District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 19362 of 2022

Arising Out of PS. Case No.-206 Year-2021 Thana- BOCHAHAN District- Muzaffarpur

TUNTUN KUMAR SON OF LATE KISHORI PRASAD RESIDENT OF
VILLAGE- CHAK JAMAL, P.S. MINAPUR, DISTRICT- MUZAFFARPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 18696 of 2022)

For the Petitioner/s : Mr. Shanti Bhushan Singh, Advocate

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

(In CRIMINAL MISCELLANEOUS No. 19362 of 2022)

For the Petitioner/s : Mr. Shanti Bhushan Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 29-08-2022 Heard learned counsel for the petitioners and

learned counsel for the State.

Let the defect(s), if any, as pointed out by the office

be removed within four weeks.

The petitioners are in judicial custody in connection

with Bochahan P.S. Case No. 206 of 2021 and NDPS Case No.



110 of 2021 for the offences under Sections 414/34 of the Indian Penal Code and Section 25(1-b)a/26/35 of the Arms Act and Section 20/22 of the NDPS Act.

As per the prosecution story, the police found a pick-up van which was intercepted and four persons namely, Ranjay Kumar, Tuntun Kumar, Md. Basin and Vinod Sahni were found present in it. The pick-up van was searched and it is alleged that 5 K.G. '*ganja*' was recovered/seized. Accused, Ranjay Kumar was also having a countrymade revolver and a live cartridge while from Md. Basin, a mobile has been recovered/seized. Accordingly, FIR was lodged and they were taken into custody.

In this case, case diary was called for on 28.07.2022 which has since been received and perused by the learned APP for the State.

Learned counsel for the petitioners submit that although there has been allegation of recovery/seizure of '*ganja*', without the same getting verified, the charge sheet was submitted on 04.10.2021 and as such even on the basis of quantity as well as the fact that police without having surety of this being '*ganja*' has submitted charge sheet, they deserved bail.

Mr. Jitendra Kumar Singh, learned counsel for the



APP has perused the case diary and he has conceded the fact that the police has submitted a charge sheet on 04.10.2021 in anticipation of report of the Forensic Science Laboratory.

Before taking decision in the matter, It is important to quote Section 36(A) of the NDPS Act, 1985 (henceforth the short “ the NDPS Act’).

“Offences triable by Special Courts – (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1972

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such persons in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:



Provided that in cases which are triable by the Special Court where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the fact constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) Nothing contained in this section



shall be deemed to affect the special powers of the High Court regarding bail under Section 339 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under Section 36.

(4) In respect of persons accused of an offence punishable under Section 19 or section 24 or section 27-A for offences involving commercial quantity the reference in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

A bare perusal of the Sub-section 4 shows that the



police has time to submit charge sheet up-to 180 days and if the same is not investigated within the said period, the Special Court may extend the period up-to one year on the report of the Public Prosecutor indicating the progress of the investigation and the reasons for the detention of the accused beyond the said period of 180 days. Completely overlooking the said section and/or being ignorant of the same, the police hastily submits charge sheet without even waiting for the Forensic Science Laboratory report.

In this case, FIR was lodged on 07.08.2021 whereas charge sheet was submitted on 04.10.2021 (within sixty days).

Taking into account that fact that the police even without verifying or waiting for a report about the seized material/substance chose to submit charge sheet, it is natural that the petitioner will seek relief in the matter.

Considering the aforesaid facts as also the fact that they are in custody since 09.08.2021, this Court is inclined to grant them privilege of bail with certain conditions in view of the fact that the petitioners have criminal antecedent.

Let the petitioners be released on bail on furnishing bail bond of Rs. 20,000/- (Twenty Thousand) each with two sureties of like amount each to the satisfaction of learned



Additional Sessions Judge-IIInd, Muzaffarpur in connection with Bochahan P.S. Case No. 206 of 2021, subject to the following conditions.

(i) one of the bailor should be the family member of the petitioner, who shall provide official document to show his/her *bona fide*;

(ii) the petitioners shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reasons will entail their cancellation of bail by the Trial Court itself;

(iii) they shall appear before the concerned police station every month for next one year to mark their presence;

(iv) the petitioners shall desist from committing any criminal offence again failing which the State shall be at liberty to take steps for cancellation of their bail bonds.

With the aforesaid observations, the bail application is allowed.

(Rajiv Roy, J)

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