

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34020 of 2021

Arising Out of PS. Case No.-585 Year-2020 Thana- BIDUPUR District- Vaishali

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KUNDAN KUMAR YADAV @ KUNDAN KUMAR Son of Virendra Ray
Resident of Village - Gauspur, Bariyarpur, P.S.- Raja Pakar, District - Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajkumar Rajesh, Adv.

For the Opposite Party/s : Mr. Bhanu Pratap Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 05-04-2022 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 08, 20, 21, 22 and 23 of the NDPS
Act.

Recovery is of 2 Kgs. of Charas.

Learned counsel for the petitioner submits that the
petitioner, who is of clean antecedent, is innocent and has
not committed any offence. In fact, according to the F.I.R.,
though altogether 2 Kgs. of Charas is said to have been
recovered from the joint possession of petitioner and others
but only 500 grams of charas has been recovered from the
possession of the petitioner, which can be evident from the



seizure list itself. He has no concern with the alleged recovery of 2 Kgs. of Charas. He also submits that the petitioner is not involved in illegal dealing of Charas. He further submits that the petitioner, who is of no fault, is rotting in judicial custody since 28.12.2020.

Learned A.P.P. for the State has, vehemently, opposed the prayer for bail of this petitioner and submits that a huge quantity to the extent of 2 Kgs. of Charas falling within the purview of commercial quantity has been recovered from the possession of the petitioner and his associates. 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. He also submits that though only 500 gram. of Charas is alleged to have recovered from the possession of the petitioner, which does not come within the purview of commercial quantity but the same is more than the small quantity and altogether 2 Kgs. of Charas for commercial activity have been recovered in which the petitioner has actively participated. 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 resinous substance kept in four small plastic dibba marked ‘1’, ‘2’, ‘3’, and ‘4’ were found to be ‘CHARAS’.

as described above was found to contain “CHARAS”.

Charas is the crude resinous matter collected from leaf and flowering tops of cannabis plant whose chief psychoactive ingredient is Tetrahydro cannabinel (THC).”

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 joint possession of the petitioner and others, confirming the same by the F.S.L. report, would not justify that the petitioner 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.

(Rajesh Kumar Verma, J)

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