

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40101 of 2021**

Arising Out of PS. Case No.-25 Year-2008 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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SUDAMA MAHTON Son of Anugrah Mahton Resident of Village - Pathara,
P.S.- Imamganj, District - Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N. A. Shamsi, Adv.

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

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

5 30-03-2022 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(b) and 15 and 18 of the NDPS

Act.

Recovery is of 3870 opium plants of Ganja.

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.,

3870 opium plants are said to have been recovered from the

field 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 opium plants. He also submits that the petitioner is not involved in cultivation of Ganja or any substance like ganja. He further submits that the petitioner, who is of no fault, is rotting in judicial custody since 13.03.2021.

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 3870 opium plants of Ganja falling within the purview of commercial quantity has been recovered from the field of the petitioner while the process of extracting liquid from the fruit of opium plants was being done. He also submits that since the recovered quantity comes under the purview of commercial quantity, the petitioner seems to be engaged in cultivation of opium plants which is nothing but a narcotic substance like Ganja. Hence, the petitioner does not deserve to be enlarged on bail.

Result of examination of Forensic Science Laboratory is as under;

“Traces of MORPHINE were detected in the contents of tin dibba described above. Morphine is the main alkaloids of the opium which is intoxicating narcotic drug.”

Since the quantum of recovery of Ganja in this case



falls within the purview of commercial quantity, 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 huge quantity of 3870 opium plants of Ganja confirming the same by the F.S.L. report would not justify that the petitioner had no knowledge of cultivation of opium plants in his field 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



Ganja 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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