

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36760 of 2022

Arising Out of PS. Case No.-199 Year-2020 Thana- THAWE District- Gopalganj

1. SHAMBHU YADAV, SON OF NAGINA YADAV, R/O- VILL- AHIRALI DAN, P.S.- TAREYA SUJAN, DIST.- KUSHINAGAR, UTTAR PRADESH
2. UMESH MISHRA, SON OF BACHCHA YADAV, R/O- VILL- FHAGU CHAPAR, P.S.- TAREYA SUJAN, DIST.- KUSHINAGAR, UTTAR PRADESH

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kant, Advocate
For the Opposite Party/s : Ms.Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 23-11-2022 Heard learned counsel for the petitioners as well as the learned APP.

2. The petitioners seek bail in connection with Thawe P.S. Case No. 199 of 2020 registered under Section 414 of the Indian Penal Code and Section 8/20 (b), (ii)(B) of the N.D.P.S. Act.

3. There is alleged recovery of 29 Kilograms of ‘Ganjas’ from the vehicle, in which the petitioners no. 1 and 2 have also been arrested.

4. On merits the prayer was earlier rejected after due consideration on 02.08.2021. Thereafter, on 23.02.2022, the application was permitted to be withdrawn with



liberty to move the Court below. The matter has thus travelled to this Court again.

5. The learned counsel for the petitioners now submits that F.S.L. report has been submitted after the chargesheet was filed and, therefore, the petitioners' continued incarceration is not in accordance with law. He has placed reliance on Judgment of a coordinate bench of this Court in ***Criminal Miscellaneous No.21326 of 2021*** and Judgment of Punjab and Haryana High Court in ***Criminal Revision No.4659 of 2015***.

6. From bare perusal of the same order, it is apparent that as on date the order was passed by the coordinate bench, the F.S.L. report had not been submitted. Learned counsel for the petitioners has also raised an objection regarding the way in which sampling was done for the purposes of F.S.L. examination.

7. In the instant case, however, the situation is different. Admittedly the F.S.L. report supporting the prosecution case has been submitted. It is also apparent from the earlier order dated 02.08.2021 that the petitioners' prayer had been rejected, having regard to the provisions contained in Section 37 of the N.D.P.S. Act, recovery being of a commercial



quantity.

8. The learned APP has opposed the prayer for bail.

9. Having regard to the earlier rejection and the mandate of Section 37 of the N.D.P.S. Act, as also judgment of the Apex Court in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Anr.* reported in (1994) 6 SCC 731, which decision was made applicable to the State of Bihar and some other States by a subsequent order passed in the same case reported in (1995) 4 SCC 695, no case is made out for grant of bail to the petitioner, since the petitioners as of now have completed only 2 years and 2 months in custody since his arrest on 12.10.2020, whereas they are accused of offences punishable with imprisonment of ten years.

10. The relevant extract of judgment in the case of *Supreme Court Legal Aid Committee (supra)* from paragraph 15 and 16 of the judgment is being reproduced for ease of reference:-

“....We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of



such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the concerned Special Judge with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under [Sections 31](#) and [31A](#) of the Act, such an



***undertrial shall not be entitled to be released
on bail by virtue of this order.....”***

11. In view of the above consideration,
petitioners’ application for bail is rejected.

(Madhuresh Prasad, J)

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