

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46086 of 2021

Arising Out of PS. Case No.-109 Year-2021 Thana- EKMA District- Saran

Hirdyanand Upadhyay @ Hridyanand Upadhyay, Male, Aged about 53 years,
Son of Rambali Upadhyay Resident of Village- Gobhi Chak, P.S.- Kuchaicot,
Dist- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha, Adv.

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 23-02-2022 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

Petitioner seeks bail in connection with N.D.P.S. Case
No. 09 of 2021 arising out of Ekma P.S. Case No. 109 of 2021
registered for the offences punishable under Sections 467, 468,
120B and 414 of the Indian Penal Code and Section 8/20 (b)(ii)
(c)/25/29 of the N.D.P.S. Act.

As per prosecution case, the police has recovered 44
packets of Ganja weighing 74.8 Kg. from the Bolero vehicle. In
course of query, the co-accused Manoj Nut disclosed that he was
bringing Ganja from the co-accused Ganesh from Chhatisgarh
to deliver the same to co-accused Sarfuddin Miyan of Village
Ama, P.S. Bheldi. He further disclosed that the petitioner is the



co-driver of the said vehicle.

Learned counsel for the petitioner submits that petitioner has clean antecedent and has committed no offence as alleged and he has falsely been implicated in the present case. He further submits that 74.8 Kg. Ganja has been recovered from the vehicle, in question and the petitioner is neither driver of the said vehicle nor is the owner and has no concern with the seized article. Learned counsel for the petitioner submits that the co-accused, namely, Sarfuddin Mian @ Sarfuddin Ansari has been granted bail by a Coordinate Bench of this Court vide order dated 22.12.2021 passed in Cr. Misc. No. 60092 of 2021.

Learned Additional Public Prosecutor has vehemently opposed the prayer for bail of the petitioner stating that the recovery of Ganja is of commercial quantity.

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and, in the event of release, he would not commit similar offence.

The issue was 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.

The recovery of huge quantity of Ganja from the vehicle, in question, and the petitioner is the co-driver, it has not justified that the petitioner had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

Hence, I am not inclined to enlarge the petitioner on bail in connection with N.D.P.S. Case No. 09 of 2021 arising out of Ekma P.S. Case No. 109 of 2021 pending in the court of learned Sessions Judge, cum Special Judge, Saran at Chapra. Prayer is refused.

Learned Trial Court is directed to expedite the trial.

(Rajesh Kumar Verma, J)

rishi/-

U		T	
---	--	---	--

