

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40283 of 2022

Arising Out of PS. Case No.-2 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Begusarai

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SANTOSH RAI @ SANTOSH RAY Son of Ramchandra Ray Resident of
Village - Mehan , P.s.- Dandari, Distt.- Begusarai.

... .. Petitioner/s

Versus

The Union of India through Narcotic Control Bureau, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Adv
		Mr. Kumar Saurav, Adv
For the Opposite Party/s :		Mr. Binay Kr Pandey, CGC

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

3 31-08-2022 Heard learned counsel for the parties.

Complainant is an Intelligence Officer of Narcotic Control Bureau, Patna Zonal Unit who in his complaint has alleged that a secret information was received on 04.02.2020 at about 15 Hours that a Bolero Pick Up bearing registration no. WB 19H 6687 is carrying Ganja in huge quantity from Tripura to Begusarai and said information was communicated in writing on 04.02.2020 to higher officials and a team was constituted of NCB officials and the team intercepted said vehicle on 05.02.2020 at about 1:00 hours in Begusarai. Person driving the vehicle disclosed his name as Santosh Rai (petitioner) and other



person sitting in said vehicle disclosed his name as Satyabir Kumar and thereafter all were taken to Balia Police Station.

During search of the vehicle, 38 rectangular packets were recovered concealed in a cavity and total weight of Ganja was found to be 204 Kgs which were marked P/1 to P/38 and were divided into two lots. Two samples of 25 gram each were drawn from each lot and were sealed with departmental seal and the rest seized contraband being 203.900 kgs were kept in 8 plastic bags and sealed with departmental seal. Signature of seizing Officer, both witnesses and accused persons were obtained on all the sealed samples and packets. Test memo in triplicate were also prepared on the spot.

Statement of petitioner and other accused was recorded under section 67 of the NDPS Act on 05.02.2020 in which both confessed their guilt and they were arrested on 05.02.2020 and produced before the learned Court of District & Sessions Judge cum Special Judge, NDPS Act, Begusarai on 06.02.2020.

Application dated 06.02.2020 was filed before the Special Court, NDPS, Begusarai, for storage of seized contraband in NCB Malkhana and seized vehicle in local Police Station. Application was submitted for deputation of learned Magistrate for certification of the seized contraband under



Section 52A of the NDPS Act, 1985, upon which learned Court directed Judicial Magistrate, Begusarai, to do sampling and certification of seized contraband and hand over to I.O. for proper examination from FSL Patna, as well as CFSL, Kolkata, and thereafter on 10.02.2020 eight samples in duplicate (16 samples) were prepared from the seized contraband and send to FSL, Patna, and CFSL, Kolkata.

It is submitted by learned senior counsel appearing on behalf of petitioner that no recovery has been made from the conscious possession of the petitioner and there was violation of mandatory provisions of the NDPS Act, which vitiates the search and seizure procedure adopted by the NCB. It is further submitted that although it is alleged that 38 packets of contraband substance were recovered but initially only two samples in duplicate (four samples) and thereafter 8 samples in duplicate (16 samples) were prepared from the seized contraband substance which is contrary to the guidelines issued in this respect and NCB was duty bound to prepare 38 samples from each packet which they failed to do. Nothing has been stated in the complaint petition with respect to two samples prepared in duplicate in the Police Station at the time of search and seizure of the vehicle.



Initially, criminal antecedent of petitioner was not mentioned in the bail petition, however, subsequently by way of supplementary affidavit it is stated that petitioner has been convicted under section 302 of IPC and has been sentenced to undergo life imprisonment, however, in Appeal filed by petitioner in this Hon'ble Court, he has been released on bail.

Having heard learned counsel for the parties and perusing the materials available on record, it is an admitted fact that 204 Kgs of Ganja was recovered from the conscious possession of the petitioner who was driving the vehicle having full knowledge that Ganja being kept in the concealed Cavity of the vehicle. An FSL report dated 08.07.2020 placed on record, issued by the Office of Director, Forensic Science Laboratory, confirms that the seized article is Ganja.

In the facts and circumstances of the present case and also in view of recovery of huge quantity of Ganja from conscious possession of the petitioner, this Court is not inclined to grant bail to the petitioner and is accordingly, dismissed.

However, from the averments made in the bail application, it appears that charges have already been framed and one witness has been examined by the prosecution, as such the Special Court is directed to expedite the trial and conclude



the same within a period of one year from the date of receipt/production of a copy of the order passed by this Court.

(S. Kumar, J)

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