

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52905 of 2021

Arising Out of PS. Case No.-18 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Dharmendra, Son of Satya Narayan Paswan, Resident of Village- Sotam
Dabra, P.S.- Lesliganj, District- Palamu, Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar
2. The UOI through Intelligence Officer, Patna Zonal Unit, N.C.B, Ministry of Home, Govt. of India.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 49340 of 2021

Arising Out of PS. Case No.-18 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

=====

Sunil Kumar @ Sunil Kumar Yadav, Son of Ganpat Rai, Resident of Village-
Raghopur, Naya Tola, P.S. - Bakhtiyarpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Union of India

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 52905 of 2021)

For the Petitioner/s : Mr. Ravi Bhardwaj, Advocate

For the Opposite Party/s : Mrs. Madhuri Lata, APP

For the Union of India : Mr. Manoj Kumar, CGC

(In CRIMINAL MISCELLANEOUS No. 49340 of 2021)

For the Petitioner/s : Mr. Jai Prakash Sharma, Advocate

Mr. Rakesh Bihari Singh, Advocate

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

For the Union of India : Mrs. Shail Kumari, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

8 26-09-2022 Learned counsels for the petitioners are permitted to
remove the defect(s), as pointed out by the office, within a



period of four weeks from today.

2. Heard Mr. Ravi Bhardwaj, learned counsel for the petitioner and Mr. Manoj Kumar, learned Central Government Counsel as well as learned APP for the State in Cr. Misc. No. 52905 of 2021 and Mr. Jai Prakash Sharma, learned counsel for the petitioner, Mrs. Shail Kumari, learned CGC as well as learned APP for the State in Cr. Misc. No. 49340 of 2021.

3. The petitioners seek regular bail, who are in custody in connection with Special (NDPS) Case No. 109 of 2019, arising out of F.No. NCB/PZU/V/18/2019 registered for the offences under Sections 8, 20(b)(ii)(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act.

4. The prosecution case is based on a written report filed by the intelligence officer, NCB alleging therein that on a secret information that six wheeler truck, bearing registration no. PB-08DS 6273 is coming from Agartala to Purnia, carrying huge quantity of Ganja. On the aforesaid information, a team of Narcotic Control Bureau was constituted and intercepted the aforesaid truck and a Swift Dezire car bearing registration no. PB10FU 2558, which was escorted the truck, in question, at Bakhtiyarpur on 05.09.2019 at 7.45 hours. The apprehended person, who was driving the truck disclosed his name as



Dharmendra (petitioner of Cr. Misc. No. 52905 of 2021) and two persons, who were found sitting in the said Swift Deziere car disclosed their names as Gurmail Singh and Sunil Kumar @ Sunil Kumar Yadav (petitioner of Cr. Misc. No. 49340 of 2021). It has further been alleged that considering the law and order problem, both the vehicles brought in the premises of Bakhtiyarpur police station and on search total 38 packets, wrapped in brown colour adhesive tape, were recovered from the secret cavity made in the Dala of the said truck and the total weight of the Ganja found to be 570 Kg. The voluntary statement of the apprehended persons were recorded under Section 67 of the N.D.P.S. Act and on the basis of the statement and seizure of contraband substance, the F.I.R. has been instituted.

5. Learned counsel appearing on behalf of the petitioner in Cr. Misc. No. 52905 of 2021 submits that the petitioner happens to be the driver of the truck, in question, has neither any concern with the truck nor with the recovered contraband substance, as the truck, in question, runs for transportation of goods by the order of the transporter/owner and he was not even aware as to what was being loaded by the transporter/owner, as the same was concerned with consignor



and consignee of the goods. He further submits that from the F.I.R. and the materials available on record, it appears that the search proceeding started at 9.00 hours on 05.09.2019 and continued till 14.00 hours on the same date, but the arrest memo has been prepared after six hours i.e. at 20.00 hours and no explanation for such delay has been assigned. Further the alleged search has been carried out at Bakhtiyarpur police station, but there is no police personnel of Bakhtiyarpur police station as a witness to the seizure list. He further submits that the F.I.R. does not disclose as to how the weight and measure of contraband was assessed. He also submits that the statement recorded under Section 67 of the NDPS Act cannot be used as a confession in the eyes of law and in support of his submission he relied upon one of the judgment of the Hon'ble Supreme Court in the case of **Tofan Singh Vs. State of State of Tamil Nadu**, reported in **(2021) 4 SCC 1**. He lastly submits that the petitioner used to work in Punjab and he occasionally drive the truck and there is nothing to show that the he had the knowledge that there was contraband in the truck kept by the transporter/owner, as the truck was carrying tea bags. Moreover, the petitioner is in custody for more than three years and now the charges have already been framed.



6. Further learned counsel appearing on behalf of petitioner in Cr. Misc. No. 49340 of 2021, apart from the submissions made hereinabove, inter alia, submits that the petitioner has neither any concern with the truck, in question, from which contraband has been recovered, as admittedly he was not apprehended from the truck, rather he was apprehended from Swift Dezire car along with Gurmail Singh, who is said to be the owner of Swift Dezire. It would be evident that nothing has been recovered from the conscious possession of the petitioner. He next submits that in fact on the fateful day he was going along with Gurmail Singh for his personal work, but in the way he was intercepted by the police on suspicion and compeled to sign on blank papers forcefully at NCB office and converted the same into his statement recorded under Section 67 of the N.D.P.S. Act, which is not admissible in the eye of law. He also submits that during the course of investigation search of the house of the petitioner was made, but no incriminating material has been recovered. He also submits that there is no material on record suggesting that any money transaction or conversation has been made amongst the driver of the truck, traffickers of the contraband and the petitioner. While concluding his submission, he lastly submits that the petitioner



having fair antecedent, is in custody since 06.09.2019.

7. On the other hand, learned Central Government Counsels appearing on behalf of NCB vehemently oppose the bail application and submits that the officers of the NCB had secret information through a reliable sources that the truck, in question, was carrying huge quantity of contraband substance and the same was being escorted by a Swift D-zire car from Agartalla intercepted the same and 570 Kg Ganja was recovered in 38 rectangular shape packets, the samples of which was sent for chemical analysis report and the same was confirmed positive, as Ganja in its report dated 03.10.2019. They next submit that on being apprehended, summons under Section 67 of the N.D.P.S. Act was issued to both the petitioners and they tendered their voluntary statement under Section 67 of the NDPS Act confessing their conscious involvement in trafficking of the seized Ganja. During the course of investigation, the CAF (customer application form) and CDR (Call Details Report) of suspected mobile numbers were received along with the certificate under Section 65B of the NDPS Act and on scrutiny it was found that the accused persons as well as the consignor of the contraband Ganja were in contact with one another and the petitioners Sunil Kumar and Dharmendra were also in contact



with the supplier Jitendra Debberma @ Jaggu. It has also found that the co-accused Gurmail Singh has transferred money to Dharmendra Kumar regularly and the petitioner Dharmendra Kumar also deposited money in Gurmail Singh's account.

8. Learned CGC also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **State of Kerala Etc. Vs. Rajesh Etc.** (Criminal Appeal No(s). 154-157 of 2020, arising out of SLP (Crl.) No(s) 7309-7312 of 2019). Further reliance has also been made on a judgment rendered in the case of **Narcotic Control Bureau Vs. Mohit Agrawal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of Petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021).

9. It would be apt and proper to reiterate the observations and the mandate given by the Hon'ble Supreme Court in the aforesaid cases that to check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions in Section 37, namely; (I) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offences



while on bail are satisfied.

10. The Scheme of 37 of the NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C. , but is also subject to the limitation placed by Section 37 of the NDPS Act, which commences with non-obstante clause.

11. The expression reasonable grounds means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

12. So far the admissibility with regard to the statement recorded under Section 67 of the NDPS Act is concerned, the Hon'ble Supreme Court in the case of **Mohit Agrawal** (Supra) while considering the aforesaid three judges Bench judgment of Tofan Singh Vs. State of Tamil Nadu has clearly observed that confessional statement recorded under Section 67 of the NDPS Act could not have relied by the NCB, as the same is held to be inadmissible in the trial of an offence under the NDPS Act.



13. Now coming to the merit of the case, earlier, a report was called for with regard to present stage of the trial, which reveals that the charges have already been framed on 14.12.2021 against the petitioners and on 09.05.2022 one prosecution witness, namely, Ashutosh Pandey, has been examined and further the next date was fixed for examination of witness on 03.06.2022.

14. Having regard to the submissions made on behalf of the parties and considering the materials available on record, it is evident that apart from the statements of the petitioners recorded under Section 67 of the NDPS Act, there are other materials, which had led the NCB team to arrive at and search and seized the truck, in question, which resulted into recovery of huge quantity of contraband substance like Ganja and further material also discloses that the petitioners and the co-accused persons were actively in touch with each other and certain money transaction have taken place, which also shows the complicity of the petitioners, apart from the fact that the trial is in progress and the observations of the Hon'ble Supreme Court showing narrow parameters of bail available under Section 37 of the NDPS Act, this Court comes to the conclusion that there are no reasonable ground to believe that the petitioners are not



indulged in the trafficking of huge quantity of Ganja, this Court is not not persuaded to enlarge the petitioners on bail.

15. However, considering the period of incarceration of more than three years, the trial court is directed to expedite the trial and take all necessary measures to conclude the same as early as possible.

(Harish Kumar, J)

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